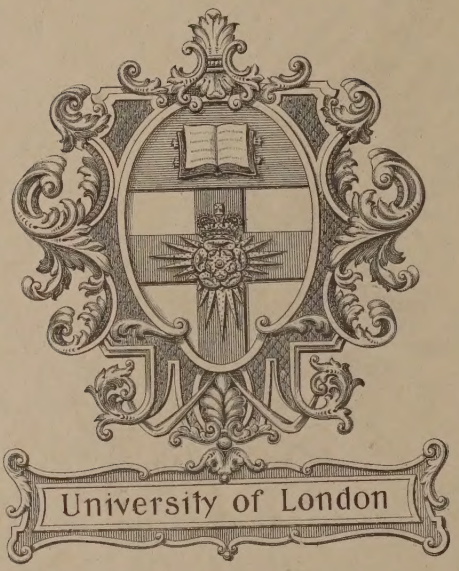
University of London

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REPORTS

FROM

COMMISSIONERS:

NINE VOLUMES.

—*(6.)*—

COMMON LAW (JUDICIAL BUSINESS);
STATUTE LAW CONSOLIDATION;
REGISTRATION OF TITLE.

Session
30 *April* —— 28 *August* 1857.

VOL. XXI.

1857—Sess. 2.

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Session

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REPORT

FROM THE

COMMON LAW (JUDICIAL BUSINESS) COMMISSIONERS;

TOGETHER WITH THE

MINUTES OF EVIDENCE AND APPENDIX.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE E. EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1857.

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VICTORIA R.

L.S.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillor John Lord Campbell, Chief Justice of Our Court of Queen's Bench, Our right trusty and well-beloved Councillor James Lord Wensleydale, Our trusty and well-beloved Sir Edward Hall Alderson, Knight, One of the Barons of Our Court of Exchequer, Our trusty and well-beloved Sir Cresswell Cresswell, Knight, One of the Justices of Our Court of Common Pleas, Our right trusty and well-beloved Councillor Sir John Somerset Pakington, Baronet, Our right trusty and well-beloved Councillor James Archibald Stuart Wortley, Our Solicitor General, Our trusty and well-beloved Sir Frederick Thesiger, Knight, Our trusty and well-beloved John Wilson Patten, Esquire, and Our trusty and well-beloved Horatio Waddington, Esquire; Greeting:

WHEREAS We have deemed it expedient that a Commission should issue for the Purpose of inquiring into the present Arrangements for transacting the Judicial Business, Civil and Criminal, of Our Superior Courts of Common Law in England and Wales, and also into the Times and Places at which Assizes are now holden, and as to the Division of the Country into Circuits, and to report to Us whether any Changes can be made by which such Business may be transacted with greater Convenience and at a less Expense, and also whether any Reduction may be made in the present Number of the Judges of the said Courts without Detriment to the Public Service.

Now Know Ye, that We, being well satisfied with your Knowledge and Ability, have appointed, and do by these Presents appoint you, the said John Lord Campbell, James Lord Wensleydale, Sir Edward Hall Alderson, Sir Cresswell Cresswell, Sir John Somerset Pakington, James Archibald Stuart Wortley, Sir Frederick Thesiger, John Wilson Patten, and Horatio Waddington, to be Our Commissioners for the Purposes aforesaid.

AND for the better effecting the same, We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons as you shall judge necessary, by whom you may be the better informed on the Subject of this Our Commission, and every Matter connected therewith, and also to call for, have Access to, and examine all such Official Books, Documents, Papers, and Records as may afford the fullest Information on the Subject; and to inquire of and concerning the Premises by all other lawful Ways and Means whatsoever.

AND it is Our further Will and Pleasure that you, or any Five or more of you, do report to Us in Writing, under your Hands and Seals, your several Proceedings by virtue of this Our Commission, together with your Opinions touching the several Matters hereby referred for your Consideration.

AND We will and command, and do by these Presents ordain, that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any Three or more of you, may from Time to Time proceed

in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your further Assistance in the Execution of these Presents, We have made choice of Our trusty and well-beloved William Henry Walton, Esquire, Barrister-at-Law, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion may require.

Given at Our Court at Saint James's, the Third Day of December, One thousand eight hundred and fifty-six, in the Twentieth Year of Our Reign.

By Her Majesty's Command,

G. GREY.

VICTORIA R.

L.S.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillor John Lord Campbell, Chief Justice of Our Court of Queen's Bench, Our right trusty and well-beloved Councillor James Lord Wensleydale, Our trusty and well-beloved Sir Cresswell Cresswell, Knight, One of the Justices of Our Court of Common Pleas, Our trusty and well-beloved Sir Samuel Martin, Knight, One of the Justices of Our Court of Exchequer, Our right trusty and well-beloved Councillor Sir John Somerset Pakington, Baronet, Our right trusty and well-beloved Councillor James Archibald Stuart Wortley, Our Solicitor-General, Our trusty and well-beloved Sir Frederick Thesiger, Knight, Our trusty and well-beloved John Wilson Patten, Esquire, and Our trusty and well-beloved Horatio Waddington, Esquire; Greeting:

WHEREAS We did, by Warrant under Our Royal Sign Manual, bearing Date the Third Day of December, One thousand eight hundred and fifty-six, appoint you, the said John Lord Campbell, James Lord Wensleydale, Sir Cresswell Cresswell, Sir John Somerset Pakington, James Archibald Stuart Wortley, Sir Frederick Thesiger, John Wilson Patten, and Horatio Waddington, together with Our trusty and well-beloved Sir Edward Hall Alderson (since deceased), to be Our Commissioners for the Purpose of inquiring into the present Arrangements for transacting the Judicial Business, Civil and Criminal, of Our Superior Courts of Common Law in England and Wales, and also into the Times and Places at which Assizes are now holden, and as to the Division of the Country into Circuits, and to report to us whether any Changes can be made by which such Business may be transacted with greater Convenience and at a less Expense, and also whether any Reduction may be made in the present Number of the Judges of the said Courts without Detriment to the Public Service:

Now Know Ye, that We have revoked and determined, and do by these Presents revoke and determine, the said Warrant bearing Date the Third Day of December, One thousand eight hundred and fifty-six; and We, being well satisfied with your Knowledge and Ability, have appointed, and do by these Presents appoint you, the said John Lord Campbell, James Lord Wensleydale, Sir Cresswell Cresswell, Sir Samuel Martin, Sir John Somerset Pakington, James Archibald Stuart Wortley, Sir Frederick Thesiger, John Wilson Patten, and Horatio Waddington, to be Our Commissioners for the Purpose of inquiring into the present Arrangements for transacting the Judicial Business, Civil and Criminal, of Our Superior Courts of Common Law in England and Wales, and also into the Times and Places at which Assizes are now holden, and as to the Division of the Country into Circuits, and to report to Us whether any Changes can be made by which such Business may be transacted with greater Convenience and at a less Expense; and also whether any Reduction may be made in the present Number of the Judges of the said Courts without Detriment to the Public Service.

AND for the better effecting the same, We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons as you shall judge

necessary, by whom you may be the better informed on the Subject of this Our Commission, and every Matter connected therewith, and also to call for, have Access to, and examine all such Official Books, Documents, Papers, and Records, as may afford the fullest Information on the Subject; and to inquire of and concerning the Premises by all other lawful Ways and Means whatsoever.

And it is Our further Will and Pleasure that you, or any Five or more of you, do report to Us in Writing, under your Hands and Seals, your several Proceedings by virtue of this Our Commission, together with your Opinions touching the several Matters hereby referred for your Consideration.

And We will and command, and do by these Presents ordain, that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any Three or more of you, may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your further Assistance in the Execution of these Presents, We have made choice of Our trusty and well-beloved William Henry Walton, Esquire, Barrister-at-Law, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion may require.

Given at Our Court at Saint James's, the Third Day of February, One thousand eight hundred and fifty-seven, in the Twentieth Year of Our Reign.

By Her Majesty's Command,

G. GREY.

VICTORIA R.

L.S.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillor John Lord Campbell, Chief Justice of Our Court of Queen's Bench, Our right trusty and well-beloved Councillor James Lord Wensleydale, Our right trusty and well-beloved Cousin and Councillor Charles Shaw Viscount Eversley, Our trusty and well-beloved Sir Cresswell Cresswell, Knight, One of the Justices of Our Court of Common Pleas, Our trusty and well-beloved Sir Samuel Martin, Knight, One of the Barons of Our Court of Exchequer, Our right trusty and well-beloved Councillor Sir John Somerset Pakington, Baronet, Our right trusty and well-beloved Councillor James Archibald Stuart Wortley, Our Solicitor-General, Our trusty and well-beloved John Wilson Patten, Esquire, and Our trusty and well-beloved Horatio Waddington, Esquire; Greeting:

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Now Know Ye, that We have revoked and determined, and do by these Presents revoke and determine, the said Warrant bearing Date the Third Day of February, One thousand eight hundred and fifty-seven; and We, being well satisfied with your Knowledge and Ability, have appointed, and do by these Presents appoint you, the said John Lord Campbell, James Lord Wensleydale, Charles Shaw Viscount Eversley, Sir Cresswell Cresswell, Sir Samuel Martin, Sir John Somerset Pakington, James Archibald Stuart Wortley, John Wilson Patten, and Horatio Waddington, to be Our Commissioners for the Purpose of inquiring into the present Arrangements for transacting the Judicial Business, Civil and Criminal, of Our Superior Courts of Common Law in England and Wales, and also into the Times and Places at which the Assizes are now holden, and as to the Division of the Country into Circuits, and to report to Us whether any Changes can be made by which such Business may be transacted with greater Convenience and at a less Expense; and also whether any Reduction may be made in the present Number of the Judges of the said Courts without Detriment to the Public Service.

And for the better effecting the same, We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons as you shall judge

necessary, by whom you may be the better informed on the Subject of this Our Commission, and every Matter connected therewith, and also to call for, have Access to, and examine all such Official Books, Documents, Papers, and Records, as may afford the fullest Information on the Subject; and to inquire of and concerning the Premises by all other lawful Ways and Means whatsoever.

And it is Our further Will and Pleasure that you, or any Five or more of you, do report to Us in Writing, under your Hands and Seals, your several Proceedings by virtue of this Our Commission, together with your Opinions touching the several Matters hereby referred for your Consideration.

And We will and command, and do by these Presents ordain, that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any Three or more of you, may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your further Assistance in the Execution of these Presents, We have made choice of Our trusty and well-beloved William Henry Walton, Esquire, Barrister-at-Law, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Thirtieth Day of April One thousand eight hundred and fifty-seven, in the Twentieth Year of Our Reign.

By Her Majesty's Command,

G. GREY.

REPORT

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

We, Your Majesty's Commissioners, whose hands and seals are hereunto set, having been appointed to inquire "into the present arrangements for transacting the Judicial "business, Civil and Criminal, of the Superior Courts of Common Law in England "and Wales, the times and places at which Assizes are now holden, the division of "the country into circuits, and to report whether any changes can be made by which "such business may be transacted with greater convenience and at a less expense, and "also whether any reduction may be made in the present number of the Judges "without detriment to the public service," humbly certify to Your Majesty that we have proceeded to inquire into and consider the several matters embraced in Your Majesty's Commission.

On entering into the subjects submitted to us for our consideration, we began by referring to the Report of the Commissioners appointed to inquire into the practice and proceedings of the Superior Courts of Common Law, dated 19th February 1829, and to the Report of the "Circuit Regulation Commissioners," dated the 3rd of June 1845, and to the Returns and other evidence upon which those Reports are founded. We then proceeded to collect such information as appeared to us to be best calculated to throw light upon the various important questions referred to us. In the performance of this duty we have been assisted by the evidence of two learned Judges, Mr. Justice Coleridge and Mr. Baron Bramwell, and by that of some of the Masters of the Courts, of Clerks of Assize, and of several eminent Attorneys. The viva voce testimony of those gentlemen, and the communications which we have received in writing from the Incorporated Law Society and various other quarters, will be found in the Appendix to our Report.

We have likewise obtained returns of the civil and criminal business on the circuits, and of the general business in all the Courts of Common Law, for a period of twelve years previous to the year 1857, which are also given in the Appendix.

Order of subjects.

We found it convenient, at the outset of our investigation, to transpose the order of subjects mentioned in Your Majesty's Commission, and to consider that last mentioned, namely, the expediency of reducing the number of Judges, before entering on the inquiry as to any alteration in the number or arrangement of the circuits.

Present number of circuits.

Since 1830, when the Welsh Judicature was abolished by Statute 11 Geo. IV. and 1 Will. IV. cap. 70., and the number of Judges increased to fifteen, North and South Wales, with Chester in common to both, have been added to the six English circuits, one Judge only travelling each Welsh circuit, and the two meeting at Chester. So long, therefore, as the present number of circuits is retained, fifteen Judges, one necessarily remaining in town, are barely sufficient for the discharge of the Civil and Criminal business on the seven circuits, and in London while the circuits are going on. If, however, the same number is also required for London business in general, any inquiry as to the practicability of reducing the number of the circuits with a view to lessening the number of Judges becomes unnecessary.

Business when twelve Judges only.

In order to ascertain the number of Judges required for the town business, it appeared to us, that as the additional three Judges might have been appointed in 1830, not on account of the pressure of the general business, but by reason of the additional circuit for Wales and Chester only, it was important to ascertain whether any inference could be drawn from a comparison between the amount and nature of business in the Courts, and the mode of transacting it, prior to 1830, when there were twelve Judges only, and since that date.

But the unequal division of business in the three Courts prior to 1830, and the consequent great arrear in the King's Bench, as contrasted with the more equal distribution of business and the absence of arrears at the present time, rendered it almost impossible to draw any inference from the comparison above mentioned.

It might have been possible, if the matters in litigation in the former period had been more equally divided between the Courts, that the twelve Judges could have satisfactorily disposed of them; but this can only be matter of conjecture, and even

assuming it to be established, the business which now occupies the Judges is (as we shall endeavour to show presently) so altered in its character, that it does not follow, even if the amount of litigation was numerically the same, that fewer than the present number of Judges would suffice.

There remains therefore the more important question, whether,—in point of fact, and independently of all comparison, fewer than fifteen Judges would suffice for the discharge, in a satisfactory manner, of the town business as it exists at present, and we proceed to examine the state of business in the three Courts at the present time, and the evidence that has been brought before us on this point.

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The returns that we have obtained on this subject include a period of twelve years, ending with 1856 inclusive, and a comparison has been made between the amount of business in 1856 and the average amount on the whole period, with a view of ascertaining whether the labour of the Judges is now on the increase or decrease.

With respect to the town business, which is the subject of our present consideration, we find that the number of writs issued, (which represents that of the actions commenced,) the days occupied at Nisi Prius, the special orders made at Chambers, and the cases in which counsel attended, were in 1856 above the average, calculated on the last twelve years.

The number of judgments on verdicts, demurrers, and Judges orders, the motions for new trials, special rules moved for in Court, days in Banc after Term, and causes entered and tried, and common orders at chambers were, in the year 1856, below that average.

There are some special circumstances connected with the comparison of 1856 with the twelve preceding years which ought to be stated. In the first place, in the year 1846, which is one of those years, there was an extraordinary number of actions commenced in connexion with the railway speculations of that period. In that year there were no less than 24,000 writs issued more than in the preceding year. In the second place, it will no doubt appear singular that while the falling off in the entry of causes in 1856 was 476, the decrease in the trials of causes was only 9, whilst the days occupied at Nisi Prius actually exceeded the average by 30.

This apparent anomaly is explained by the operation of the Statute 18 & 19 Vict. cap. 67., which came into operation in October 1855.

A very considerable number of actions in the Superior Courts are brought on bills of exchange, and previous to that Statute, a defendant seeking to gain time, pleaded to the action, which either went to trial as an undefended cause or was settled after it was entered, and before trial. Now, however, when such an action is brought, under the provisions of the Statute alluded to, a defendant is not permitted to appear to the action without leave of a Judge, on an affidavit showing grounds of defence. This is the true cause of the disparity between the number of actions commenced, and causes entered in 1856; while the very small decrease in the number of causes actually tried, proves rather that the really contested actions have increased, and the great excess in the number of days occupied on the trials is strongly corroborative of this deduction.

In order further to justify the conviction at which we have arrived, that these returns prove, on the whole, rather an increased amount of judicial labour than a diminution, it is necessary to explain the effect that recent legislation has had upon the procedure and practice of the superior Courts of Law.

The Statute authorizing the examination of the parties to the suit has now come into full operation, and has received a further development from the alteration recently introduced in the mode of addressing the jury, by allowing the counsel on each side to sum up his evidence; these two great changes have beyond all doubt increased the time occupied in trials at Nisi Prius, not however without proportionate advantage to the public.

The County Courts have also cleared the cause lists of the Superior Courts of many trifling actions, so that a cause paper of the present day numerically the same as one of former times, in reality represents a mass of contentious litigation of far more intricacy and importance. As far as the trial of causes is concerned, we are all satisfied that the judicial labour in London has increased. and accordingly we find that to keep down arrears it is frequently necessary that two Judges in each Court should sit at Nisi Prius at the same time. Undefended causes, which were very numerous in the cause papers of former days, are now extremely rare.

The effect of recent Acts of Parliament, more particularly of the Common Law Procedure Acts, 1852 and 1854, has been to transfer to the Judge at Chambers the

great bulk of those applications respecting matters of practice, which were formerly brought before the full Court, and on which special rules were granted, as well as to originate many new applications of a similar nature. The decrease in 1856 of these special rules, and the great increase of special orders at Chambers, show that this description of business has only been transferred to a different tribunal.

The number of judgments on verdicts, demurrers, and Judges orders in 1856 was below the average. These cannot be distinguished from each other.

We have shown that the actual trials were only nine under the usual amount; the judgments, therefore, on verdicts could not have fallen off in a greater proportion. The number of judgments signed on demurrer cannot be ascertained, but notwithstanding the abolition of special demurrers in 1852, in 1856 there was only a decrease in demurrers of five as compared with 1851. It is clear, therefore, that the principal decrease was in the judgments on Judges orders, the signing of which depends on whether the defendant complies with the order, and affords no test of judicial labour.

It is true that the old practice of justifying bail has become obsolete, and that special demurrers, rules to compute, and many other proceedings of a mere formal nature have been abolished; but on the other hand recent Acts of Parliament, such as those which relate to Interpleading, Joint Stock Companies, Railways, and particularly the two Common Law Procedure Acts, have introduced entirely new matters of business, far outweighing in difficulty and importance those that have ceased to exist.

We may add that it seems highly improbable, considering the great increase of commerce of late years, the accumulation of wealth, and the general prosperity and activity of this country, that litigation can have diminished, and such a conclusion cannot reasonably be drawn from the falling off or even abolition of obsolete and useless forms of proceeding, and the substitution of a more rational system.

On the strictest examination, therefore, into the actual state of the business in the Courts, we are satisfied there is no ground for making any reduction in the number of Judges, and in this opinion we conceive that we are fully supported by the evidence contained in the Appendix. A view of the question well worthy of consideration is disclosed by that part of Mr. Justice Coleridge's testimony, in which he says:— Page 32, Question 528.

"I venture to make this remark, with respect to the number of Judges and circuits, "and having perhaps less personal interest in it than any other Judge, I may make it "with the less scruple.

"I think it is not at all desirable that more work should be put upon the Judges "than they now have to do; that work being not merely that which the public see, "but including a great deal of reading and writing, of which the public know nothing "but in its results. If you make it impossible for a Judge to go into society, or to "cultivate liberal pursuits, you not only do him harm, but eventually you do very "considerable harm to the profession; and whatever is in this sense injurious to the "profession is equally so to the public."

The statement of the late Mr. Lavie also, who represented the opinion of the Incorporated Law Society in London, is deserving of great attention. "The sentiments "of the Council of the Law Society are, that the number of the Judges ought not to "be reduced; and the sentiments of all the members of the profession, the attorneys "that I have spoken to, without exception, are that it ought not to be reduced. Every "one expresses rather his wonder that there should be any thought of reduction. "Some say that they should have thought that the number might be increased instead "of being reduced. I think there is but one feeling on the subject among the body "of attorneys in London." Page 37, Question 593.

In addition to these expressions, coming from persons eminently qualified in their different branches of the profession to arrive at a just conclusion, we may observe, that any commercial crisis, such as those which occurred in 1825 and 1846, might give rise to an extraordinary increase of litigation, which would be certain to cause a large accumulation of additional arrears, if the judicial staff were not fully equal to the dispatch of the ordinary business, and able by extraordinary exertion to meet an emergency. Indeed, in our opinion, to reduce the number of Judges at the present time would most probably cause an arrear even of ordinary business, and would certainly render it impossible for the Courts to dispatch any unexpected influx of an extraordinary nature.

We will now consider whether any alteration could be made in the present mode of transacting the judicial business in London which would justify us in recommending a reduction in the number of Judges.

The duties performed by the Judges during the judicial year in London may be thus described:—

During the four Terms four of the Judges in each Court sit in Banco. The fifth or 'outsitting' Judge presides at the Nisi Prius sittings, and attends Chambers. After each Term the Lords Chief Justices and Lord Chief Baron sit at Nisi Prius, and now a second Judge frequently assists the Chief, by holding a second Nisi Prius Court. After last Trinity Term no less than six Judges were engaged at Nisi Prius in London at the same time.

After Term the Cases in Error and Appeals from the respective Courts are heard, occupying generally eight Judges.

All the Judges have to give their attendance in rotation at the Central Criminal Court —two, and in important cases three, being present at each monthly session. In the last year, 44 days' attendance were given; three Judges sat 10 days, two Judges sat 16 days, and one Judge 18 days.

All may be summoned to the House of Lords; ten generally attend; in 1856, 11 days were so occupied.

Sittings in Banco, when required, are also held out of Term by those Judges not engaged at Nisi Prius.

The Judges who are members of the Judicial Committee of Privy Council may be summoned to attend there.

The Lord Chancellor, Lords Justices, and Vice Chancellors, occasionally require the assistance of one or more Common Law Judges.

Attendance is also given at Serjeant's Inn to hear tax cases.

About six days in term, and three after term, are occupied in deciding Crown cases in the Court of Criminal Appeal; never less than five Judges meet, but that number is at times considerably increased. Private Bills are occasionallyreferred to the Judges for their opinion, and they are frequently called upon by the Home Secretary for reports upon criminal cases tried before them.

This outline of judicial duties applies only to such as are before the public; much time must necessarily be devoted in private to the consideration of judgments, and the reading error books, special cases, demurrers, appeals, and reported decisions of the other Courts. Upon this point the evidence of Mr. Baron Bramwell is extremely important.

The only mode that has been suggested of enabling a smaller number of Judges to discharge these various duties is, to diminish the number of Judges sitting in Banco to three instead of four. The fourth Judge in each Court would then take the duties of the outsitting Judge.

Without entering into the question, upon which a difference of opinion exists among the Commissioners, whether a Court consisting of three Judges is preferable to one consisting of four, it is sufficient to observe that making allowance for occasional absence from ill health, necessary attendance elsewhere, and other causes, the regular attendance of three Judges in term, or in Banco out of term, could not be secured, while the number of Judges available for the Courts of Error, Nisi Prius, House of Lords, and other multifarious business out of term time, would be inconveniently lessened by the reduction of the whole number of Judges to twelve or thirteen. We are all agreed that a frequent diminution of the number of Judges sitting in Banco to two would be a very serious evil, and consequently we have come unanimously to the conclusion that we cannot recommend a reduction which would lead to such diminution.

If this decision be approved of, it follows that there will be no necessity for any change in the number of circuits.

The practice which has now obtained for many years of one Judge remaining in town during the circuits and long vacation to dispose of the Chamber business is so necessary that we have no hesitation in stating that it cannot be dispensed with.

emorials
om towns.

As the remodelling of the circuits must be, in great measure, subordinate to any addition that may be made to the existing number of Assize towns, we shall now consider the memorials which we have received, claiming that separate Assizes should be holden, or that the Assize jurisdiction should be extended with respect to the following places:—

Manchester.	Bristol.
Lancaster.	Birmingham.
Leeds.	Kendal.
Wakefield.	Wisbech.
Hull.	

It is urged on behalf of a separate Assize for Manchester and the hundred of Salford, that Manchester is the centre of vast and increasing manufactures and commerce, and that, with the addition of the borough of Salford, it contains a population of 401,321, whilst the hundred of Salford contains one of 937,793. Manchester.

That the following manufacturing towns, with populations varying from sixteen to ninety thousand, are within the hundred of Salford, and considerably nearer to Manchester than to Liverpool:—

Ashton.	Bury.
Bolton.	Middleton.
Oldham.	Dean.
Rochdale.	Dukinfield (in Lancashire).

The inconvenience and additional expense of prosecutions and civil trials, arising from the Assize business of these towns being transacted at Liverpool, are said to be very considerable; and the attendance of jurymen, prosecutors, and witnesses, more particularly of the police, at so great a distance from home, is complained of as a grievance, that might be remedied by the holding a separate Assize at Manchester, so much more conveniently situated for that purpose.

There are undoubtedly serious objections to creating an additional Assize town in any county, on account of the double attendance required from the Sheriff, and officers connected with the Courts, and the jurymen, and the increased length of the Assizes.

The necessity also of providing Courts, Judges' lodgings, and gaols, at a very great expense, forms an objection in our opinion; though the memorialists in the present instance seem to consider it of very slight importance in comparison with the great benefits they anticipate from the change.

We have also given due weight to the evidence of Sir John Bayley, the Clerk of Assize on the Northern Circuit, and the statement submitted to us by Mr. Shuttleworth, the Clerk of the Crown for Lancashire, as to the trifling additional expense of prosecutions from the hundred of Salford, conducted at Liverpool, as compared with those from West Derby. We find, however, that a very different state of things prevails with reference to the trial of causes, as it appears that the expense of witnesses in a cause tried in the same town where the attorney and witnesses reside is more than doubled when they live thirty miles from the Assize town.

The prayer of the memorials from Manchester is supported by similar applications from the borough of Salford, and from Rochdale, Bury, Bolton, Oldham, Ashton, and by a memorial from the Law Society at Liverpool, stating the disadvantage accruing to the Liverpool suitors from the Manchester and Salford list being disposed of first, the Liverpool causes thus being postponed to the end of the Assizes.

We have been unable to resist the force of these considerations, and being satisfied that an advantage outweighing all reasonable objections would arise, not only to Manchester and the borough of Salford, but to the several large commercial towns in the hundred of Salford, and to the suitors in the hundred of West Derby also, from the change proposed, we humbly recommend to Your Majesty that, subject to the provision of proper Courts, Judges' lodgings and other accommodation, a separate civil and criminal Assize should be granted to Manchester for that city and the borough and hundred of Salford.

If this recommendation be carried into effect the duties of the Sheriff of Lancashire, already doubly onerous by reason of the Assizes at Lancaster and Liverpool, will be increased to an unreasonable extent. We suggest, therefore, either that two Sheriffs should be appointed for the county for the year; or if only one, that he should hold office for a period of six months only.

On behalf of Lancaster, the memorialists sought an extension of their Assize jurisdiction, comprising the County Court jurisdictions of Ambleside, Kendal, and Kirkby Lonsdale, situate in Westmoreland, and of Kirkby Lonsdale, Settle, and Clitheroe, situate in Yorkshire. Lancaster.

The local position of Lancaster, as the centre of a system of railways diverging therefrom, its possession of the County prison, and the excellence (which must be admitted) of their Courts, were put forward as the chief grounds of the memorialists claim.

We are opposed to altering the Assize jurisdiction of Counties by adding to one County part only of another, without some very strong and over powering reasons. In this case we are of opinion that no such reasons have been assigned, and we are unable to recommend the adoption of this proposal.

The memorialists of Leeds and Wakefield claim respectively a separate Assize for the West Riding of Yorkshire, and a deputation from each of the towns attended, and gave evidence before the Commission. Leeds and Wakefield.

The principal argument urged by the representatives of both Leeds and Wakefield was the saving of distance to witnesses and jurymen, in the event of either of those towns being selected as the Assize town for the West Riding in lieu of York.

A glance at the map will show that the principal towns in the West Riding, as, for example, Barnsley, Bradford, Dewsbury, Halifax, Huddersfield, and Sheffield, are nearer to both Leeds and Wakefield than to York; but as Leeds is only thirteen miles from Wakefield, the claims on the ground of proximity to the large manufacturing towns must be nearly balanced.

Leeds has at present a population of about 190,000, Wakefield one of 33,117. At the former town a town hall is now being erected, which will contain two Courts, suitable for Assize Courts. Accommodation for the Judges would no doubt be provided at both places.

The gaol at Leeds will contain from 300 to 350 prisoners, and is to be enlarged for 30 more female prisoners, and could be still further increased.

Wakefield has a gaol capable of receiving 1,500 prisoners, two court houses larger than either of the Courts at York, and the Corporation are about to build a town hall, which would be available for a third Court.

A deputation from York also attended before us to oppose the claims of both Leeds and Wakefield. The reasons in favour of retaining the Assizes at York for the whole county were;—the excellent accommodation there for the business of the Assizes and for the reception of the Judges, the recent enlargement of York Castle, which includes the Courts and county prison, at a cost of upwards of 150,000*l*., and the advantage in times of civil commotion of the Assizes being held in a town like York, rather than in a densely-populated manufacturing town like Leeds, or one in the neighbourhood of it like Wakefield. It is also to be observed, as having a very important bearing upon this subject, that the general feeling of the West Riding magistrates seems to be against the removal of the Assizes from York at all, in support of which two resolutions of the grand jury were brought forward in favour of retaining the Assizes at York, one of which was passed before the present Commission was issued, and the other at the last spring Assizes.

In the former case eighteen out of twenty-two, and in the latter twelve out of twenty-three county magistrates who signed the resolutions were magistrates of the West Riding.

One town only, Huddersfield, in the West Riding, sent in a memorial praying for the removal of the Assizes from York, and that was in favour of Leeds.

We are unanimous in opinion against the expediency of a separate Assize at Leeds, but with respect to Wakefield a difference of opinion exists among the Commissioners.

Sir John Pakington and Colonel Wilson Patten consider that Wakefield has established a claim for a separate assize, whilst on the other hand Lord Campbell (the Chairman of the Commission), Viscount Eversley, Lord Wensleydale, Mr. Justice Cresswell, Baron Martin, and Mr. Waddington are in favour of retaining the Assizes for the whole County at York.

Hull.

The memorial from Hull prays that the Assizes granted by charter of King Edward the First to that town, and discontinued in 1794, may be restored, and that the adjacent parts of Lincolnshire may be comprised within their Assize jurisdiction.

The increasing size and importance of the borough and port of Hull, and the facilities afforded by railway and river communication, are urged in favour of this proposal.

We are unanimously of opinion that sufficient grounds have not been alleged, to justify us in recommending the suggestions contained in this memorial.

Birmingham.

A deputation from Birmingham, consisting of the Mayor and Town Clerk, attended before the Commission, and urged the expediency of making that town the Assize town for the County of Warwick, or the Assize town of a district to be defined by Act of Parliament, including the mining and manufacturing districts of South Staffordshire.

The population of Birmingham was stated to be one half of the whole population of the county, and it was alleged that about one third of the criminal and civil business at Warwick came from Birmingham and its suburbs; that the town and borough are increasing in trade and importance; that the railway communication in all directions would render Birmingham a more convenient Assize town than Warwick, and that situate at the confines of the Counties of Warwick and Stafford, it is the centre of a large mining and manufacturing district. The railway journey between Warwick and Birmingham occupies rather more than half an hour. The gaol holds 486 prisoners, and is not more than sufficient for the borough; 100 additional cells are nearly completed. There are no Courts for the Assizes and no Judges' lodgings, but there is an ample site applicable for that purpose.

We collect from the evidence of the Town Clerk, that if the above proposals were rejected the inhabitants of Birmingham would consider a separate Assize at their town, in addition to one at Warwick for the rest of the county, an acceptable boon, and would willingly incur the very considerable outlay required for that purpose.

We are all agreed that the Assizes ought not to be removed altogether from Warwick; and no sufficient grounds are laid before us to induce us to think that part of Staffordshire ought be formed into a district with Birmingham as the Assize Town.

On the question whether, subject to the proper Assize accommodation being provided, a separate Assize should be holden at Birmingham for the borough alone, or for the borough and some part of the county, we are equally divided in opinion.

Sir John Pakington, Baron Martin, Colonel Wilson Patten, and Mr. Waddington, voted in the affirmative; Lord Campbell, Viscount Eversley, Lord Wensleydale, and Mr. Justice Cresswell in the negative.

The next subject of inquiry related to Bristol. Bristol.

This city, by charter of King Edward the Third, was separated from the adjoining Counties of Somerset and Gloucester, and made a County of itself. Up to the year 1835, when the Municipal Reform Act passed, a gaol delivery was held by the Recorder, and latterly twice a year. The population, by the operation of that Act, which included within the ancient city several adjoining parishes, was nearly doubled, and in 1851 was 137,328. Many of the more serious criminal offences previously tried at Bristol are now, by the abolition of the gaol delivery, necessarily sent to Gloucester for trial, a distance of thirty-six miles, but they do not average more than eighteen cases each Assize.

The memorialists from Bristol complain of the inconvenience and expense of prosecutors, witnesses, and prisoners having to go to Gloucester, and of the injustice to the prisoner, who is seldom able to raise funds sufficient to enable his witnesses to travel that distance.

The citizens of Bristol, however, have the advantage of being exempt from serving on either the Somersetshire or Gloucestershire juries.

The Recorder has a civil jurisdiction in the Tolzey Court to an unlimited amount, but as there is no power of granting a new trial or appeal, causes of importance are not often tried there.

An Assize for civil business is held at Bristol, at the close of the Western Circuit, once in a year, and it is alleged as a grievance, that in local actions, such as in ejectments, the party entitled to possession is delayed nearly a year before he can obtain judgment. This complaint, however, is subject to the observation that now the venue in ejectment may be changed by order of a Judge on the application of either party.

The prayer of the memorial is, that two criminal and a second civil Assize may be holden at Bristol. An additional Court would be necessary for the criminal business, but it was stated that the town council would make the required arrangements.

With the exception of Mr. Justice Cresswell, we are all of opinion that a second civil Assize should be granted to Bristol for the trial of civil causes; and on the question as to the criminal Assizes for that city, four of our Board, Viscount Eversley, Baron Martin, Sir John Pakington, and Colonel Wilson Patten, are of opinion that Bristol should have criminal as well as civil Assizes; Lord Campbell, Lord Wensleydale, Mr. Justice Cresswell, and Mr. Waddington are of a different opinion.

The Mayor, Alderman, and Burgesses of Kendal, and the magistrates residing in the Kendal and Lonsdale wards of the county of Westmoreland, complain of the inconvenience and expense they have been put to by the Assizes being held at Appleby, and claim that Kendal should be appointed the Assize town instead of Appleby. It is not improbable that the magistrates of the east and west wards of the county would have equal cause to complain if the Assizes were removed from Appleby to Kendal, and we do not think that the circumstance of the larger proportion of prisoners tried at the Assizes coming from the Kendal and Lonsdale wards is a sufficient reason for recommending the adoption of the proposal. Kendal.

We are also of opinion that the circumstances of the Isle of Ely having had an ancient criminal and civil jurisdiction, which is abolished, and of Wisbech being at the distance of forty miles from the Assize town of Cambridge, are no grounds for granting to that town a separate Assize. Wisbech.

We next considered the various suggestions made as to the number of circuits in each year, the times of holding the criminal and civil Assizes, and the number and distribution of the terms.

Circuits.

The chief objection to the present times for holding the Assizes is the long interval between the close of the Summer and the commencement of the Spring Circuits, nearly eight months.

Special Commissions.

To obviate this, as far as criminal matters are concerned, special commissions for the trial of prisoners have lately been issued in December into such counties as the Secretary of State for the Home Department has deemed expedient.

These commissions being limited to such places only as require an early gaol delivery, are in that respect preferable to a fixed circuit, in which the Assizes must be holden whatever the state of the gaol may be.

We have received from several members of the legal profession plans for a new arrangement of circuits and terms. Some suggest an equal division of the year, with two circuits only; others propose three circuits for criminal and civil business at certain large towns; and by some three terms are recommended instead of four.

In favour of the plan first above mentioned, it was strongly urged that, if the circuits were equidistant, not only would a third Civil Assize be less necessary, but the Winter Special Commissions might possibly be dispensed with also.

The best division of the year suggested was that of one circuit in January, and another in July. This would leave the Summer Circuit as it now is.

The first and obvious objection that presents itself is that of the inconvenience of a long Assize in January; but there is a second obstacle to this proposal, which is of a more serious nature, and indeed seems to us insuperable. The usual time for the Special Commissions for criminal business now is the month of December, the Spring Circuit being in March, and the Summer in July.

The proposed Winter Circuit would be in January, and the detention of prisoners during the additional month would not be of any great importance, but the detention until the Summer Assizes of prisoners committed after January, who would under the present arrangement be tried at the Spring Assizes, and the consequent increase of the criminal calendar on the Summer Circuit would be evils of considerable magnitude.

The result of the calculations which we have made from the circuit returns show that, taking York, Liverpool, Stafford, Warwick, and Winchester, and allowing for the period of imprisonment saved to those prisoners who might be committed after the period of the usual Winter Assize in December, and whose period of detention would be shortened by their being tried in January instead of in March, the various periods of additional confinements imposed on prisoners in these five counties alone would equal altogether the imprisonment of 273 persons for 147 days each.

The calendar of prisoners also on the Summer Circuit, already large in many counties, would be nearly doubled.

It seems to us, therefore, that a Special Commission would necessarily have to be issued for some counties at least in the spring, and the change would be for the worse, in having the full circuit in the depth of winter and the Special Commission in the spring.

We have still to meet the not unreasonable complaint of the long interval between the trials of causes on the circuits and the want in some towns of a third civil Assize.

We should have been better satisfied to have been able to recommend the same amount of convenience for the decision of civil actions three times in the year at every important Assize town; but we are satisfied that, owing to the number of Judges that would be called upon to leave their Town duties for this purpose, this object cannot be effected without inconvenience to the public of a very serious amount, more than counterbalancing the benefits to be derived therefrom by particular localities.

For some few towns which, from their population and extended commerce, most require it, Judges may be spared in sufficient number, and we propose that those places should have the benefit of what in effect will be a third civil Assize.

We therefore are unanimously of opinion that the existing system of Spring and Summer Assizes, with a Special Commission in the winter, is on the whole most convenient.

But we are of opinion that, together with the special Winter Commission for criminal business, a Commission of Assize and Nisi Prius should be issued for the disposal of civil business for Yorkshire and Lancashire, and such other places as may from time to time clearly require such assistance.

And we also recommend that, on account of the great and unnecessary inconvenience caused to the public and the profession by a third Assize, when not imperatively required for the despatch of business, the Special Commission of Gaol Delivery should be limited to those towns where the amount of criminals awaiting their trials renders such increased facilities of unquestionable importance.

We are convinced that this plan, if adopted, would remove the principal grounds of complaint, as, when an undoubted necessity for a third civil Assize arises in any county,

the Special Commission might, as far as the number of disposable Judges will allow, be extended to such county, and an additional advantage will be, that suitors in the neighbouring counties will be enabled to lay the venue of their actions nearer home. We think, also, that every facility should be given to a change of venue by the plaintiff to such places, if necessary.

And we are also of opinion, that in order to expedite the trials of actions on contracts, the defendant should not be allowed to change the venue except on cause shown, and that, if legislation be necessary to effect this object, it should be resorted to. Change of venue.

We must now state the result of our deliberations on the question of remodelling the circuits, assuming that our suggestion of separating Manchester from Liverpool is adopted.

The former Commissioners in 1845, to whose report we have already alluded, and to which we must again refer, entered minutely into the state of the different circuits, and we have brought up the inquiry to the present time. The details of the amount of business on each circuit will be found in the Appendix. The result to be obtained from them is, that there has of late years been a considerable falling off in the number of causes, and a corresponding increase in that of prisoners, but the time now occupied by the Judges on the circuits is quite equal in duration to that of former years. Remodelling of Circuits.

With the exception of Mr. Justice Cresswell, we agree with the Commissioners of 1845 in thinking that the Northern Circuit is now too long, and that a more equal division as to time and judicial labour should be made, and we concur in the observations contained in the following extract:—

" All are agreed that the Northern Circuit is at present inconveniently long, and that " the business of some of the smaller circuits might, without improperly pressing upon " the Judges, be increased, and the Northern Circuit divided; but the only effective " division which is practicable with the present number of Judges would clearly involve " the annexation either of Yorkshire or Lancashire, or of some part of one of those " counties, to the duty of two Judges other than those travelling the Northern Circuit."

If, as we propose, a separate Assize should be held for Manchester and the Hundred of Salford, the Northern Circuit, already, in the opinion of the majority of the Commissioners, inconveniently long, would, in the opinion of us all, be too much prolonged, and therefore it is more imperative on us to suggest a remedy.

The Commissioners of 1845 were not agreed in recommending any change for adoption at that time, but, with the exception of one of their Board, who abstained from giving any opinion, they considered that if any change did take place the Norfolk Circuit Judges should go to York, which was to be taken away from the Northern Circuit. We are unable to assent to this arrangement, though we admit that it would be an improvement upon the existing state of things. We think it however open to many objections. It would add too much to the length of the Norfolk Circuit, and necessitate, without any corresponding advantage, a journey of about 200 miles to York at the close of the ordinary Norfolk Assizes. There is, moreover, no connexion of any description between Yorkshire and the counties comprised in the Norfolk Circuit.

Upon the best consideration of the several suggestions submitted to us, we are all of opinion that the most convenient arrangement, if Manchester be separated from Liverpool, would be to add to the North and South Wales Circuits the adjoining counties of Salop and Hereford from the Oxford Circuit; and as an equivalent for the counties taken away from the Oxford to add to it Warwick from the Midland Circuit, and to annex York to the Midland, diminished by Warwick and Northampton, which latter town we propose to join to the Norfolk Circuit.

We think, also, that the rapidly increasing amount of business in Glamorganshire requires that two Judges should go to Cardiff and Swansea, at which towns they would most conveniently commence their circuits.

The duration of these circuits would then be, as nearly as we can estimate, as follows:—

North and South Wales	36 days.
Northern (without York)	30 „
Add for separating Liverpool and Manchester	6 „
	36 „
Oxford (without Salop and Hereford, and with Warwick)	31 „
Midland (with York, and without Warwick and Northampton)	35 „
Norfolk, with Northampton	28 „

The Home and Western Circuits will remain unchanged, except by a second Assize at Bristol for civil business upon the latter.

We must now advert to another point, in connexion with the Welsh Circuits. The communications which we have received from the Clerks of Assize represent in strong terms the great disproportion between the time consumed on those circuits and the amount of business transacted. Their remarks are fully borne out by the returns.

Page 6. The Commissioners in 1845, in dealing with this subject, state,—"It certainly "appears very desirable in itself that the Welsh Circuit should be remodelled, so that "the Assizes may be held before two Judges, the number of Assize towns being "diminished, the disadvantage of a circuit being travelled by a single Judge being "serious, and sensibly felt; but this cannot be accomplished without a considerable "expense in the erection of new Courts, the enlargement of gaols, and the preparation "of additional lodgings for the Judges; and unless it should be thought proper to provide "for these, in the first instance, at the general expense of the whole kingdom, they "will throw a heavy expense upon the counties in the Principality.

"We know that these and other obstacles prevented the plan recommended by the "Commissioners for the amendment of the law, appointed by His late Majesty King "George IV. in 1828, from taking place; and we have, therefore, abstained from "entering into an inquiry with respect to any change on the Welsh Circuit."

Two of the members of our Commission, Lord Wensleydale and Mr. Justice Cresswell, decline to join in any recommendation to Your Majesty to consolidate the Welsh counties for the purpose of holding Assizes, but the rest of our Board, although admitting to some extent the difficulties alluded to by the former Commissioners, do not deem them insuperable.

In the first place, we are of opinion that it will not be necessary for two Judges to attend at every town, even where the consolidation has taken place, as the business of two of these small counties combined will remain quite insignificant; and further, the expenses alluded to, of providing Courts and Judges' lodgings might be avoided in some instances by alternating the Assize towns of adjoining counties. By these arrangements the attendance of the sheriffs, magistrates, and jurors, would be less frequent, and the Judges and their official staff and the bar would be saved attending twice a year at certain Assize towns, in which the average of two prisoners and one cause is the extent of occupation they are to expect.

We confidently anticipate that no serious opposition would be made by the inhabitants to a measure that would in reality save expense and trouble to themselves as well as effect a public good, and would afford a relief to the gentry and yeomanry of those counties, while it economized the time of the Judges, so valuable to the country. Should, however, a strong local feeling exist in antagonism to the alteration we propose, we can only submit for consideration whether it should be allowed to prevail, as we are confident that it will be of very short duration, when the tangible advantages of the proposed change have been actually experienced.

The plans that have been submitted to us for the accomplishment of this object, and which will be found in the Appendix, contain very valuable suggestions, and emanate from gentlemen possessing much local knowledge and experience.

It would have delayed our Report too long to have communicated with the local authorities in the different counties, in order to obtain that information without which we are unable to propose any definite plan. We shall, therefore, select from the suggested alterations those which appear to us most worthy of further inquiry and consideration.

Those of our Board who agree in recommending that these circuits should be remodelled are of opinion, that on the North Wales Circuit, Ruthin and Mold alternately should be the Assize town for the Counties of Denbigh and Flint. There is a railroad from Bangor to Mold, but not to Ruthin; the Spring Assize therefore should be held at Mold.

Bangor would decidedly, in point of locality, be the most convenient Assize town for Carnarvon and Anglesea; if Bangor should be objected to, then Carnarvon for the two counties. As in 24 circuits there were only 16 causes at Beaumaris, we have selected Carnarvon, where there are on an average nearly three each circuit.

Newtown and Dolgelly have been suggested as the alternate Assize towns for Montgomeryshire and Merionethshire; but, as we are informed there are several projected lines of railway in those counties, we think no change at present desirable.

The locality of Carmarthen is such, that it has been suggested as the Assize town for the three counties of Carmarthen, Pembroke, and Cardigan, and the arguments of Mr. Vaughan, the Clerk of Assize, in favour of this plan, have great weight. As, however, we believe there would be less objection to alternate Assizes, than to such a

scheme, we think that the counties of Cardigan and Carmarthen should have alternate Assizes, and Haverfordwest remain the Assize town for Pembrokeshire.

Brecon and Presteign have been recommended as the Assize towns for the counties of Brecon and Radnor. The two counties together only furnish on an average sixteen prisoners and four and a half causes each circuit, and Radnor only five prisoners and one cause.

The Commissioners of 1829 were of opinion that Radnorshire should be added to Herefordshire. We have no confidence that any attempt to try Welsh causes or prisoners in an English county would be attended with success.

The courts at Brecon are superior to those at Presteign, and, as the business is more at the former place than at the latter, we think that Brecon should be the Assize town for the two counties.

We do not propose any alterations in the four legal Terms.

Terms.

It has been submitted that the short vacation between Easter and Trinity Terms, about ten days, is objectionable, and that three Terms in the year, each about a week longer than the present, would be preferable to four shorter Terms. No arguments, however, have been adduced sufficiently clear and cogent to warrant us in recommending the repeal of the Statute by which the Terms are at present fixed, and we cannot suggest so important a change without being clearly convinced that it would be a change for the better.

London sittings.

It has also been urged that the London sittings at Nisi Prius during Term are inconvenient to the Bar and Attorneys, who may be called away from the Term business at Westminster Hall to attend at Guildhall, or from Guildhall to Westminster.

The Judges are best able to decide whether it is expedient to dispense with the Term London sittings or not, and we are confident that it may safely be left to their discretion to make such arrangements in this respect as will be most convenient to the public and the profession.

Judges' Chambers.

We have frequently alluded to the increasing importance of the various matters of business at the Judges' Chambers.

The outsitting Judge, when engaged at Nisi Prius, may be unavoidably detained beyond the usual hour for his attendance at chambers; and in such case one of the Judges sitting in Banc is frequently obliged to leave the Court to discharge those duties, arriving very often later than the appointed hour. That hour varies from two to three o'clock, which appears to us to be inconveniently late, and, considering the nature and amount of the business, the time allotted to it is in our opinion too uncertain; and we recommend that one Judge sitting for all the Courts should attend daily at a much earlier hour, and that the two other outsitting Judges should sit at Nisi Prius in either of the Courts as occasion may require, without leaving for the purpose of attending at chambers.

We are convinced that such an arrangement would much facilitate the despatch of business, and, by giving longer time for hearing the cases, would avoid the appearanec of hurry and confusion which is now complained of.

The two remining subjects connected with the arrangements made for transacting business in the Superior Courts of Common Law which we have taken into our consideration relate to the suspension of legal proceedings during the time allotted to the long vacation.

Pleading and Nisi Prius in Vacation.

By Statute 2 Wil. 4. cap. 39, no pleading is permitted to take place between the 10th day of August and the 24th of October. Process may issue between those periods, and if the Defendant neglects to enter an appearance (which is the course to be adopted if he intends to resist the action), judgment may be signed and execution issue thereon; but if the defendant, although no real grounds of defence exist, appears according to the exigency of the writ, or if the action has advanced to declaration, and the defendant's time for pleading expires after the 10th day of August, all proceedings in the suit are stayed until after the 24th of October.

We submit that this interval, even in ordinary actions, is inconveniently long, and in cases of magnitude (and such have occurred recently), when there is no defence, the delay, or an intervening bankruptcy, may seriously alter the rights of parties, and prevent the recovery of a just demand.

We therefore recommend the substitution of the 1st of October for the 24th as the period when the suit may be proceeded with; and also, in order to obviate the evils above referred to, that one or more Judges be empowered to try causes arising in

any of the three Courts after the 1st of October, at such intervals between that time and Michaelmas Term as may be deemed necessary.

We think sittings of this description, which probably would not exceed two days in the week, at a time when the business at chambers is comparatively small, will not be exacting too much from the Judges. An Act of Parliament will be required to carry into effect the two last proposals.

We have now gone through in detail the different subjects which have been presented to us for our consideration, and have laid before Your Majesty the conclusions at which we have arrived. We have all felt strongly that, before recommending changes of importance in the mode of administering justice, it became us to satisfy ourselves clearly, by arguments leaving no doubt or hesitation in our minds, that such changes were called for by the wants of the public, and were for the general advantage and welfare of the nation. By some of the alterations which we have proposed more labour will undoubtedly be imposed upon the Judges; by others, the interests of some members of the Bar may possibly be for a time affected. With regard to the first of these considerations, we are confident that the additional exertions required from the Bench will be willingly and cheerfully made; and with regard to the second, however much we should regret such a consequence of a partial re-arrangement of the circuits, we cannot allow it to deter us from laying before Your Majesty, in obedience to Your Majesty's commands, our unanimous resolution upon that subject. We have only to add, that upon this, as upon all other branches of our inquiry, our great study has been to ascertain to the best of our ability in what mode the object required for the public benefit could be attained with the smallest sacrifice of private interest and convenience.

We humbly submit this our Report to Your Majesty's Royal Consideration.

Campbell.	(L.S.)
Eversley.	(L.S.)
Wensleydale.	(L.S.)
C. Cresswell.	(L.S.)
Samuel Martin.	(L.S.)
John S. Pakington.	(L.S.)
J. Wilson Patten.	(L.S.)
H. Waddington.	(L.S.)

Dated 31*st day of July* 1857.

MINUTES OF EVIDENCE

TAKEN BEFORE

THE COMMON LAW (JUDICIAL BUSINESS) COMMISSION.

Saturday, 14th February 1857.

THE HON. MR. JUSTICE CRESSWELL IN THE CHAIR.

The Hon. MR. BARON BRAMWELL examined.

The Hon. Mr. Baron Bramwell.

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1. Can you give the Commission any information on the extent of the labours of a Baron of the Exchequer as to what they are at the present time?—I can tell you what I have had to do since the beginning of the business time, and, as well as I can judge, what I shall have to do till the end of the usual business at the beginning of the Long Vacation. The Term began on the 3rd of November, and continued till the 25th, during which time of course I sat in Court.

2. For what average number of hours?—The average number of hours is six—from 10 till 4. There are some exceptions not worth naming. For instance, on the first day of Term we do not meet till 2, on Mondays we do not meet till 11, and on Saturdays we rise at 3.

3. Are the labours of the day closed when you quit the Court at 4 o'clock?—Most certainly not; but I will reserve what I have to say upon that point till a future time. On the 26th, 27th, 28th, and 29th I attended at Chambers.

4. Will you mention the number of hours?—That is very uncertain. I should say four hours, from 11 till 3.

5. On the average?—On the average I should certainly say from 11 till 3 in the Exchequer. I will not undertake, at the present moment, to say that upon some of those four days I was not there as late as 5; but on the other hand, I have got away at half-past 1. But including those affidavits, which, I think, for the convenience of the parties, it is desirable you should not settle the business of at Chambers, but take home to read, I have no scruple in saying that there is about four hours' work on the average. On the 1st of December, which was on a Monday, I went on the Winter Circuit, and I returned from the Winter Circuit on the 24th of December; but out of those days there were two during which I was in town.

6. Which Circuit did you go?—I went a Circuit composed of portions of three different Circuits. I went to Cardiff, to Gloucester, to Chelmsford, to Maidstone, and to Lewes, and I saved two days out of that time, during which I was in town entirely. Of course those days were saved by sitting late. I should say that at Cardiff and at Gloucester I went into Court at 9, and left between 7 and 8. Of course it is a great convenience to jurymen, witnesses, and parties, if you can let them go the same night, instead of making them attend another day. Out of that time I was two entire days in town, and portions of others, that is to say, days upon which I either left town to go on Circuit, or returned from Circuit to town; but I have put down two days as entirely saved out of that period. On the 26th, 27th, 29th, 30th, and 31st of December, the 1st, 2nd, 3rd, 5th, 6th, and 7th of January, making eleven days, I was not engaged in the discharge of that part of my duty which is done in public.

7. Those were holidays?—Yes. I will show you how I disposed of those holidays presently. On the 8th, 9th, and 10th I was at Chambers.

8. Occupied at Chambers the same as on the previous occasions?—Yes. I do not think that the difference in the time is worth notice; it probably might be a little less.

9. But you are bound to be at the service of the public during the day?—I am. From the 12th to the 31st was Term time. I was what is called "out Judge;" that is to say, if there was no Nisi Prius business I sat in Banc; if there was Nisi Prius business I took it, and as soon as I got away from that work I had to go to Chambers. I am quite certain that I speak within compass when I say that my work then commenced punctually at 10, because when juries are there, and there is a single Judge, it is more necessary and more easy to be exactly punctual than when there are not juries, and when there are other Judges also. I was punctually in Court at 10. I certainly did not leave on the average till 3, and I then went to Chambers, where I must have had from two and a half hours to three hours of work, besides affidavits to read afterwards.

10. From 10 till 6, then, were the hours you were engaged?—Yes, certainly. From the 31st of January to the 7th of February I ought to have been the first four days

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sitting in the Court of Error, and was so for three days; but upon the other day I went to the Old Bailey, where I ought also to have been on another of those four days. On the fifth day of that week I went to the Old Bailey, and so could not sit, where I otherwise ought to have done, in my own Court in Banc at the "After Term sittings." On the sixth day I did sit in my own Court in Banc at the "After Term sittings;" so that, in truth, in those six days I had work for nine; that is to say, on the whole six days I ought to have been at Westminster, either in the Court of Error or in the Court in Banc, and I ought also to have been three days at the Old Bailey. I was away from Westminster two days when I ought to have been there, and I was away from the Old Bailey one day when I ought to have been there. From the 8th to the 14th, including the present day, we had appointed to have sittings in Banc; we sat for three days, and the other three days we did not sit, partly owing to our not being able to make a Court upon one day, and partly owing to Counsel desiring that their cases might be delayed, because they were engaged in the City; the reason why we could not make a Court being that we were a Judge deficient.

11. You require two for a Court, do you not?—We rather prefer three, I think. Three days, therefore, in that week are to be added to my days not employed in Court. Speaking upon the supposition that we have four Judges, then all next week I shall be free from any public duty.

12. Except going to Chambers?—I shall not go to Chambers next week, upon the assumption that there are four Judges, because Mr. Baron Martin would go the first week, Mr. Baron Watson the second week, the fourth Judge would go the third week, and I should go the fourth week. But I may mention here that, if it should so happen that the causes in the City required it, I should have to make a second Court with the Lord Chief Baron. However, I will assume that they will not, and I shall then have another six days away from the public.

13. When you assume that there are four Judges, you mean four Judges besides the Lord Chief Baron?—Yes. In the last week in February, that is to say, until the 28th of February, I shall have to go to Chambers, when I shall certainly have work, according to my past experience, from 11 to 5, owing to the approach of the Circuits, and the necessity for doing business which cannot be postponed till the Court sits in Banc; and my experience undoubtedly is that I get six hours' work at Chambers during that time. In the week after that, which ends on March the 7th, I shall have to go to the Old Bailey again, because I am the North Wales Judge; but out of that week I shall have certainly two days unoccupied. I shall have another day on March the 9th. From March the 10th to April the 4th, I shall be on Circuit.

14. When is your last Commission day?—The 28th. Between the 4th of April and the first day of Term I shall have eight days with no public duty. From April the 15th to May the 8th is Easter Term.

15. Then the whole of every day is occupied?—Every day is then occupied. From May the 8th to May the 22d I shall have to be at the Old Bailey and to take my fourth of Chamber duty, which I calculate will amount to six days, giving me five in that interval to myself.

16. Have you made any allowance for the Court sitting in Banc after Easter Term?—I have not. I have supposed that there would be no Banco sittings and no Error sittings, and on that supposition I have given myself five days.

17. But is it likely that there will be neither?—I have not contemplated either the one or the other, but no doubt the condition of our arrears in the Court of Exchequer is such, that it would be desirable, if we can arrange to have Banc sittings, that we should do so; whether it will be possible to do it, I am sure I cannot say at the present moment, and I was not aware that it was usual to have Error sittings after Easter Term.

18. It was not usual, but the new system of appealing has created so great an increase in the business in the Court of Error, that it is necessary. At the last sittings in Error, the Court only disposed of two cases of Error from the Exchequer, and there are a great many remaining to be heard.—But upon the supposition which I have made, that we have neither of those sittings, I have then five days more to myself. From May the 22nd to June the 12th is Trinity Term; from June the 12th to the 19th I suppose we my say we shall be sitting in Error; from June the 19th to the 26th I have no hope but what we shall have such an amount of arrears as to sit in Banc; the following week, from June the 26th, I suppose we shall be in the House of Lords. No doubt I ought to calculate upon more, but inasmuch as I cannot be in two places at once, and the only remaining week I shall have to be at Chambers, I have supposed that from June the 26th to July the 3d I shall be in the House of Lords, and from July the 3rd to July the 10th I shall be at Chambers.

19. But you have to attend the House of Lords first and go to Chambers afterwards?—Yes. Of course it is to a certain extent speculation, what particular weeks or days will be employed in these particular matters, but there will be sittings in Error after Term, there will be sittings in Banc after Term, there will be the House of Lords after Term, and there will be my share of the Chamber business after Term.

20. In one way or the other do you mean to say that you would be kept fully employed until the Circuit?—In one way or another, I have very little doubt that out of that month, inasmuch as I think the House of Lords does not sit on either Wednesday or Saturday

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and inasmuch as when the Courts go into the City you cannot get Counsel to attend the sittings in Banc after Term, and it may so happen that upon those vacant days I am not the Judge at Chambers, I shall probably have a day or two, perhaps more, it may be half-a-dozen, I cannot tell.

21. In the month?—In the month from July the 10th until at least August the 10th, and any time within a fortnight later I am on Circuit.

22. At the last Summer Circuit, one of the Circuits began on the 5th of July at Cardiff? That was an exception?—Cardiff, I believe, always begins a little earlier than the other Circuits, in order that the Judge may be in time to meet the North Wales Judge, who begins a week after the average of the Circuits. Assuming that I get the six days which I have mentioned in the month before I go on Circuit, I shall have had 44 days not engaged in business in public. But I desire to mention what else I have to do besides this regular ordinary public business, and I will mention everything, though some matters may be of very little importance, and others of more importance. The Judges have to hear Tax cases. They are liable to be called on also to sit in Equity, to assist the Judges in Equity. They have Bills referred to them by the House of Lords. It occasionally happens that a Judge is asked by the parties to undertake the decision of a case for them which may come before him in a variety of way;—for instance, upon an interpleader summons at Chambers; or I may mention another case, which certainly is germane to the matter in hand. There was a case which came before us in Banc, I think in last Trinity Term. It was a case of considerable complication, and the Court and the parties asked me to hear it and decide it, which at their request I agreed to do. From that time down to the present I have never been able to give them a day, and I am going to hear it on next Monday. Then a Judge has to prepare his notes for the Court in cases where there are motions for new trials, or to enter verdicts, where he has tried them; and, although his clerk copies out the notes, of course he has to revise them. He has to prepare any cases which may come before the Court of Criminal Appeal. He has not to any very great extent, but to some extent, to correspond with the Secretary of State for the Home Department, if any reference is made to him. He has to read his special paper, and his paper books in cases in Error; and he has his judgments to prepare in cases which are reserved for consideration. And as to that, I cannot help saying, that to my mind, that last matter alone is very nearly a full occupation for the number of leisure days which I have supposed myself to have in the course of the year.

23. Except the Long Vacation?—Except the Long Vacation. It is very easy to write a judgment, but not very easy, in my mind, to write a good one. I think it is all important that one should have ample time for the preparation of judgments in those cases which do not admit of decision at the time when they come immediately before the Court. Now I have mentioned that I had eleven days between Christmas Day and the first day afterwards that I went to Chambers. I can assure the Commission that of those eleven days there were not three in which I was not engaged in writing, I will not say judgments, because they were not afterwards adopted and read by the Court as their judgments, but in writing what, if they had been approved of, might have been delivered as the judgments of the Court. In particular, there is one case which will be in the knowledge of some of the members of the Commission, a case not in my own Court, but a case argued in the House of Lords, namely, Lane v. Hooper, in which I will undertake to say that if I opened one book, I certainly opened, including those that I opened twice, a hundred, so that that was the way in which I was occupied. I was writing a judgment then. When I say a judgment, the object of writing down your opinion in the form of a judgment is, that you may circulate it amongst either the members of your own Court or those who have to consider the matter with you, in order that they may see how far they agree with you or how far they differ from you; because it is obvious that one can write down one's opinions on paper more methodically and clearly than one can state them in conversation with a brother Judge who has to decide the case. Now I say, that I think it really is of the greatest importance that one should not be hurried in that particular matter; because, in the first place, you have to decide between the particular parties, and the result of a wrong decision is, that you give to one man that which belongs to another. But there is another consideration, which to my mind is almost equally important, and it is this,—the losing party is never satisfied, but if he thought that he not only had had injustice done him, but that that injustice was attributable to the haste or negligence of the Judge, just consider how much greater his dissatisfaction would be. At all events, you had better let him go away with the feeling that he has not suffered from the incompetence or indifference of the person who has decided against him. I think the public satisfactory administration of justice requires that. Then there is another thing; you must bear in mind that our decisions do not merely settle the particular case, and are then forgotten, but that they are cited as precedents; and I am sure anybody who knows the mischief that an unfortunate decision occasions, will say that it would be very desirable that it should never take place, not only for the sake of the particular parties concerned in it, but for the sake of the public generally, because what is the consequence? It is in vain to say that you settle the law by it. You do not settle the law for as long as a case is decided upon a wrong principle, although the Courts may abide by it, because they consider it their duty not to overrule the judgment of a Court of co-

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ordinate jurisdiction, yet you are continually having attempts made to distinguish other cases from it by circumstances, which indeed make a difference in point of circumstance, but none in point of principle, so that at length the case gets nibbled and carped at, and shaken, till somehow or other it is gone. I would not require a better example of that than a well-known case which was decided by the House of Lords. No Court, of course, could overrule it, but it has given rise to as much litigation as could possibly take place, and the result is, that that case has not been overruled, but distinguished from to such an extent, that if any party now cited it he would be laughed at. I need not say that I make these remarks under the correction of those members of the Commission who know about these matters better than I do, from their greater experience, but I make them, subject to that correction, very confidently; and I really would press upon the Commission very strongly the great importance of not driving the Judges to hasty judgments upon those cases which are of such a character that they cannot decide them in Court. There is another matter which I must mention to the Commission. Lord Wensleydale, one of the Commission, told me, and my own judgment goes with it, that no Judge can do his duty who does not read the Reports. Ever since I have been upon the bench I have faithfully read all the Reports.

24. What Reports are those?—Reports of Cases and Decisions in the different Courts. When I was at the Bar I did not read them, and I did not pretend to read them, and my clients knew that I did not read them, and they took me for better for worse with notice. But I cannot serve the public in that way, and I read them now diligently and faithfully, and they require time; I do not mean to say that the reading of them is laborious, because from long habit and inclination, I do not say but that the reading of the Reports occasionally is rather an amusing thing.

25. Do you read all the multifarious Reports; namely, The Jurist, The Law Journal, The Justice of the Peace, and The Law Times?—No; I read what I suppose you may call the orthodox Reports of the three Common Law Courts, namely, Ellis and Blackburn, the Common Bench Reports, and Hurlstone and Norman. I read the Law Journal Reports, Equity and Common Law, and I read the Jurist Reports. I read over the same case very often three times, but if I do not do so, I am not sure that I shall not miss it, so I read it to make sure. If I find upon reading it that I remember it, I do not always trouble myself to read any further. What I have now stated is my work besides the Long Vacation. I do not want to trouble the Commission with what one may call personal details, but I can undertake to tell them that I very often work, certainly as often as not, and am obliged to work, after I have come out of Court, and after I have had my dinner. I work in the evening, in short, and at other times which one need not more particularly name, but which are not included in any of the days which I have here mentioned. There is no remedy for it that I know of; I do not mean to say that one is always obliged to do it, but continually one is so obliged.

26. What is the average period of the Long Vacation?—I should say that the average of the Long Vacation would be from about the 14th of August to the 2nd of November.

27. About 80 days?—Yes; one Judge has to be in town the whole of the Long Vacation: that generally falls to the lot of a junior.

28. The Judges on the Northern Circuit are not generally liberated till the 1st of September, are they?—That is so; and on the Home Circuit not quite so late; three or four days earlier than that perhaps.

29. Last summer, at the last place, the Home Circuit began on the 4th of August, and lasted about a fortnight, we suppose?—Yes.

30. The labours of the Judges, according to your account, are increased by the multiplicity of Reports, are they not?—As I said before, I cannot read them without consuming time in reading them. I am almost reluctant to call it a labour, because, as I have said, it is more often to me an amusement than anything else; but if it were not an amusement I should still have it to do. No doubt if it were not there to be done, one could not do it; so that in that sense it may be said that the multiplicity of Reports causes an additional amount of occupation. It may be asked, why does one read the same thing in duplicate? My answer to that is, that if I distinctly comprehend the case when I read it I do not trouble myself to read it again; but it very frequently happens that you find varieties of expression in the judgments, where they have not been considered and written, of such a character that it is quite desirable that you should read both Reports. You may find that one reporter is struck by one remark, which he puts down, and while writing it, not being an accomplished shorthand writer, something escapes his attention which the other puts down.

31. Do you consider that the statement which you have just made conveys a fair idea of the work done by the whole fifteen Judges?—I do not like to answer for anyone but myself. I do not know what my brethren of my own Court would say. I cannot suppose that I work harder in my own Court than they do, except in so far as I may be more laborious and slow in the discharge of what I have to do out of Court than they are. My brother Judges may be more rapid in their own proceedings out of Court than I am. I cannot undertake to answer for that, but no doubt they have quite as much to do before the public as I have.

32. Is any distinction made in that work between the Chiefs and the Puisne Judges?—The Chief does not go to Chambers, but he sits at Nisi Prius for a month after three of

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the Terms, and then for a week after another of the Terms, and he rarely goes to the Old Bailey. We know a memorable instance recently in which one of the Chiefs did so, but as there are always three Judges on the Old Bailey rota, it rarely happens that more than two go, and consequently the senior is excused. Then the Chief does not commonly sit in the House of Lords, because he sits in his own Court at Nisi Prius, and as one Judge must be away from the House of Lords the Chief more generally is so.

33. Lord Chief Justice Tindal always sat in the House of Lords?—He did. Let me add this: inasmuch as the Chiefs have first choice of Circuits, they have easier Circuits than the Puisne Judges.

34. Can you state what difference was made in the London work of the Judges in consequence of the number of Judges being increased from twelve to fifteen?—I am wholly unable to answer that question. I was not in the profession when the thing was done. I suppose the question means: when those duties were put upon the Courts at Westminster which were put upon them at the time of the appointment of the three additional Judges, what amount of additional labour did it involve?

35. Can you inform the Commission in what way the London business of the Judges was performed when there were only twelve Judges?—I cannot tell.

36. (*Mr. Justice Cresswell.*) The Judges at that time used to attend Chambers in the evening about seven o'clock; in addition to that, the sittings in Term were held before the Chief Justice, who used to break up his Court for the purpose of holding the sittings at Nisi Prius; that still continued when I was called to the Bar, the Chief Justice of the Court of Queen's Bench used to break up the sitting in Banco at twelve o'clock in Term time on certain days to hold a Nisi Prius sitting; that was about twice in the Term: but on those occasions nothing but undefended causes were tried in Term time. The sittings in Term time lasted for a few hours each day. All that has been totally altered, causes are now tried of as grave a character, and lasting as long, in Term time as in the sittings after Term, and by that means, and by that only, you get through the business, which has been enormously prolonged both from the modern manner of trying causes, and from the habit of hearing them out instead of disposing of them as they used to do in a very summary way. A cause is now enormously prolonged by an accumulation of speeches, which are allowed, very properly I dare say, under the last Common Law Procedure Act, and also by allowing parties to be examined as witnesses, which imposes on every Defendant the necessity of getting into the witness box, and when he has once taken the plunge of appearing as a witness himself, of course he brings others to support him if he can.

37. (*To Mr. Baron Bramwell.*) You have referred several times to the labours imposed on the Judges by the sittings in Banc out of Term. We believe that up to the year 1829, the date of the "Courts of Common Law Report," and of the increase in the number of Judges, with the exception of occasional sittings by the Judges of the Court of Queen's Bench out of Term, there were no sittings in Banc out of Term.—No.

38. Subsequently to the increase of the number of the Judges from twelve to fifteen we believe that the Legislature gave powers to all the Courts to sit in Banc out of Term time.—They did, by an Act passed, I think, in the first and second years of the present reign, or immediately, about that time, in the begining of the reign of Her present Majesty.

39. What was the exact date of the increase of the Judges.—1830.

40. According to your experience, since the increase of the number of Judges, has there ever been any period when the business of the Court was so light as to make it unnecessary to hold those sittings out of Term.—I think that has just happened; it is as much as one can say that it has happened.

41. Has it happened lately? we are not now speaking of one Court particularly, but of the Courts generally.—I have an impression that it did happen within two or three years.

42. But generally speaking, there has been business enough to make it necessary to hold those sittings out of Term?—I have an impression that within two or three years the Court of Queen's Bench had no sittings in Banc after Term, and that the Court of Common Pleas had no sittings in Banc after Term, but I think that in the same year the Court of Exchequer had. In other words, I do not think there has ever been a year or a Term in which all three Courts have been without "After Term sittings in Banc."

43. Is the business of the three Courts generally pretty equal?—No. As to the number of writs, I think the Exchequer has a considerable proponderance.

44. Taking the sittings of the Judges in point of time, is the time occupied by the three Courts about the same?—No. I think the Exchequer may be said almost to sit as much oftener than the Common Pleas as is indicated by the number of After Term sittings in Banc. The Common Pleas, I think, rarely sits after Term in Banc; but one of its members can tell you that much better than I can.

(*Mr. Justice Cresswell.*) It is not very often. We attempted it this time. We have done it when any arrears have called for it, but it does not very often happen. Our late Chief Justice had a singular facility in the despatch of business, and generally got through it in Term time. The Court of Common Pleas until recently had not occasion to sit during Term time so many hours as the Court of Exchequer. We have not so much business in Chambers. For some reason or other, which I am unable to explain, there are fewer records upon Circuit out of the Common Pleas; and therefore the number of motions for new trials, and the number of questions that have to be argued on motions for new

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trials in the Common Pleas from the Circuit, are much fewer. I think that we may take Mr. Baron Bramwell's statement of the work done by a Judge as the normal condition of the work of the Puisne Judges, say in the Common Pleas if you please; or it may be taken that the Common Pleas have not quite so much to do. The business of the Common Pleas is increasing, in consequence of some new duties which have been cast upon them. We have the Registration Appeals; they are now but few, they are diminishing in number. We have applications under the Railway Traffic Act, which are not yet, I believe, very numerous, but which, when they do come, are very troublesome.

45. (*To Mr. Baron Bramwell*). Will you be kind enough to state the number of days of vacation which your statement has comprised, taking the Long Vacation and the remainder of the year.—I have said that at the outside there would be 44 days, but that is exclusive of the Long Vacation. I do not believe that there would be 44 days unoccupied in public business; but in order that I might make no mistake, I have put down the actual days. I would call it the possible rather than the probable, as I have said, owing to the House of Lords not sitting on the Wednesday and on the Saturday, and owing to the possibility that when they do not sit I may not be the Judge at Chambers, and from other similar causes, I have supposed that I may have a saving of six days in the last month of the London business; but in all that I may be deceived.

46. When you speak of 44 days' vacation, you mean vacation from the duty of sitting in public?—Vacation from the duty of sitting in public; and, as I said before, subject to the possibility of being called upon to assist any of the Equity Judges, or subject to the possibility of having to sit to form a double Court at Nisi Prius.

47. Or for a sick Chief Justice?—Yes.

48. And subject also to the necessity of occupying a considerable portion of that time in preparing your judgments?—Yes, and any other duties which fall to our lot.

49. Has not there been an increase of business lately from the more frequent sitting of the Central Criminal Court?—Yes.

Adjourned to Saturday next, at half-past 10 o'clock.

Saturday, 21*st February* 1857.

THE RIGHT HON. LORD WENSLEYDALE IN THE CHAIR.

Mr. J. A. Ikin.

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Mr. JOHN ARTHUR IKIN examined.

50. Are you the Town Clerk of Leeds?—Yes.

51. Do you verify the statement which has been placed before us of the distances of the different places from Leeds and Wakefield and York respectively?—Yes. I propose to call a witness who prepared the Tables who will verify that statement. This is a large map of the whole County of York shewing Leeds (*producing the same.*)

52. Has there never been a petition from Leeds or Wakefield to the Privy Council for the Queen to appoint two places for the Assizes, which she has power to do by Statute?—No; the petition presented to the Privy Council was a petition presented from Leeds to meet a case which was got up at Wakefield in the year 1855.

53. Was not there one before the year 1855?—I believe there was one some years before from Wakefield; ten or fifteen years ago.

54. Will you show us the position of Leeds with regard to the whole county?—(*The witness pointed out the same.*)

55. Will you show where York is?—(*The witness pointed out the same.*) That is the boundary of the West Riding (*showing the same.*)

56. Then Wakefield?—(*The witness pointed out the same.*)

57. What is the gaol accommodation at those three places respectively?—Leeds has accommodation for from 300 to 340, York about 225, and Wakefield about 1,200.

58. But those 1,200 comprise a great many persons under sentence from different parts of England?—Yes.

59. What is the present gaol accommodation of Leeds?—300 to 350 at present; we are going to enlarge it for 30 more female prisoners.

60. At Wakefield do they not take some of the Birmingham borough prisoners under a contract?—Yes.

61. Do you recollect how many?—No. We took Government prisoners at Leeds till within the last year, but the Government have removed them.

62. Are any county prisoners committed to the Leeds Gaol, or is it confined to borough prisoners?—Borough prisoners.

63. Is it barely sufficient for them, or more than sufficient?—The numbers vary. It is more than sufficient for the Leeds prisoners, with the exception of females; female crime has increased very rapidly in Leeds, as I believe it has in other places throughout the country; and two or three months ago a resolution was passed to enlarge the female accommodation with 30 new cells. It is a new prison. Preparation has been made for enlargement, I believe, and a further enlargement could take place to it for 200 or 300 more prisoners.

64. The contemplated enlargement at the present time is entirely for the women?—Yes.

65. How much beyond the requirements of the place is the accommodation for male prisoners at Leeds?—I could not state it very accurately.

66. But you say that the Leeds prisoners are all borough prisoners; the York prisoners are all county prisoners are they not?—Yes. Our Justices commit for murder and manslaughter to the county prison at York.

67. The gaol, being a new gaol, is on the separate system, is it not?—It was built on the separate system. I would state that Tables numbered 1, 2, and 3, have been laid before the Commissioners. They were prepared in 1855 to meet the case of a petition which I believe was never presented to the Privy Council from Wakefield. I propose to call the Treasurer of the Borough of Leeds, who prepared those Tables, to prove the accuracy of them with your permission. The petition presented at Leeds for the purpose of meeting the case at Wakefield at that time, which is dated 10th of October 1855, will shortly state the claims of Leeds; and it should be considered that it was prepared not for the purpose of coming before the Privy Council, claiming that the Assizes should be removed to Leeds, but to show that if the Assizes were removed from York, Leeds had a greater claim than Wakefield. (*A copy of the petition was delivered in.*)

68. If no alteration at all takes place, are you content that the Assizes should be held at York?—That is not so. We shall be able to show you that we are providing very superior Courts at Leeds; and we now think that the time has come when the claim of Leeds independently should be brought before the Commission. I wish to explain that this matter having been before the Privy Council, I thought it only right that the Commissioners should have before them what had passed upon the subject, and to give a history of the agitation of the subject.

69. What is the population of Leeds now?—It was 171,805 at the last census; I suppose in round figures we may take it at nearly 190,000; it would be 183,255, taking it on the average increase.

70. Does that include the neighbouring villages of Hunslet and Kirkstall?—Yes, the Borough of Leeds; it is a very large borough; it is one of the largest boroughs in England.

71. Are the Parliamentary and Municipal boundaries the same?—They are practically the same.

72. What is the nature of the accommodation which Leeds is preparing now besides Courts?—I propose to show you that directly; I have brought up a member of the Committee, and the architect who is preparing our new Courts, who will show that better, perhaps, than I can do.

73. What you desire may be done by the Privy Council, without the recommendation of the Commission, namely, altering the place of holding the Assizes?—I am aware of that; but I am before the Commission, having received an intimation from the Secretary.

74. Where are the Quarter Sessions held for the West Riding?—At Pontefract, Wakefield, Bradford, Sheffield, Rotherham, Leeds, Knaresborough, and Skipton, and Doncaster.

75. Do you mean that they are held in succession at those places, or that every quarter they are held in each of those places?—The Spring Sessions are held at Pontefract, the Summer Sessions are held at Skipton, Bradford, and Rotherham; and the October Sessions are held at Knaresborough, Leeds, and Doncaster, and other places.

76. Do they adjourn from place to place?—Yes. I now hand in lists extracted from the Gaol Delivery from the Crown Calendars from 1850 to 1856 inclusive. I have a tabular statement, which I can also hand in; I have carefully examined this with Mr. Noble's book from York.

77. Is that showing the number of prisoners that Leeds contributes?—Yes; and also the number tried.

78. What accommodation is there at Leeds for the reception of the Judges, in the event of an Assize being held there?—There is no accommodation yet provided for the Judges' lodgings. I may refer to the General Statute. The Justices have power to order that accommodation to be provided.

79. In the event of Assizes being held at Leeds it would be necessary to charge the County with the expense of Judges' lodgings?—We are building a very large Town Hall in Leeds. I propose to show the plans directly. The Municipal Body would be quite willing to provide those lodgings at their own expense in the building or near it.

80. Have they had a meeting upon that subject?—They have not had a meeting upon it; but I am instructed by the Committee, who have the management of the arrangements of the Town Hall, to say so. They would appoint rooms in or near the Town Hall.

81. The building is now in progress, and in the event of its being decided to hold Assizes at Leeds they would, before the building is completed, provide accommodation?—Yes.

82. How is the accommodation at Wakefield, either for Courts, or for the reception of the Judges?—There is no accommodation for the reception of the Judges at all at Wakefield. The Courts are tolerably good there.

83. How is the accommodation for the reception of the Judges at York? It is pro-

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vided by the County and is very good. Leeds contributes to that. It is an old building. I also hand in a Tabular Statement from the Cause Lists of the Yorkshire Assizes, from 1850 to 1856 inclusive.

84. It appears that Leeds contributes about one-sixth of the prisoners, or rather more?—From one-fifth to one-sixth.

85. You have put in a tabular statement of the prisoners; how have you divided those, by villages, or districts, or how?—We had a number of tables prepared already, where we had taken the principal villages. We tried to get these out in the time which we had with reference to our tables; but the West Riding of Yorkshire is an exceedingly large district. We have hundreds of places in it and we found that we could not do it in that way. We have, therefore, taken from Mr. Noble's own books the name of every village.

86. Who is Mr. Noble? Is he the Gaoler at York?—Yes. I took it from his own book,—the best information I could possibly get; and this is the name of every village from which a criminal was committed.

87. Is this List the same as in Nos. 1, 2, and 3?—No.

88. Are the places the same?—No. Many of them will be the same places, but the table now in the hand of one of the Commissioners, has the name of the village, township, or parish from which the criminal was committed to York.

89. How would you show the relative benefits of the Assizes being removed to Leeds and Wakefield except by the towns of Leeds and Wakefield themselves?—That is so, and that table is not sufficiently prepared in order to show you as clearly as I could have wished, the immense preponderance of people coming from the west to be tried at York, but it does show the number of people tried from Leeds. From my own knowledge of the West Riding, if I had time given, I could prepare a much fuller statistical table which would show the immense preponderance of persons from the west.

90. This does not show the relative advantage to the county generally as between Wakefield and Leeds?—No; certainly not.

91. Could you show us how, from these tables, we could get that?—Yes; if I had further time given. I have given a tabular statement of the criminal list.

92. Which table are you now upon?—The Crown calendar; I wish to be permitted to add the distances to that table.

93. In this table No. 2, you give the population of all the places of any consequence in the West Riding with the important exception of York itself, there is no mention of York?—York is not in the West Riding.

94. But the Assizes are held there?—Yes.

95. You want to show the population of these places comparatively with York where the Assizes are held, do you not?—No. York is just at the edge of the West Riding.

96. Do not you want to remove the Assizes from York?—Yes; to Leeds.

97. You want an adjournment?—Yes.

98. You want an Assize in the West Riding and you say Leeds is better than Wakefield?—Yes.

99. With what object do you desire an Assize at Leeds?—From the immense saving which it would be to the merchants who have to attend, in the first place, as jurors, and also the great saving to the country with reference to the trial of prisoners. The country generally, as you are aware, pays all the costs of the prosecutions; they are paid out of the borough or county rate, and they are returned.

100. What would be the difference of expense to the public between trying your prisoners at York and trying the West Riding prisoners at Leeds or Wakefield?—I propose to call before you a gentleman of large practice both in criminal and civil business at York, who will give an answer to that question,—a gentleman now comes from the Government to tax all the Bills,—and he would be the gentleman to give the information as to the criminal business.

101. In point of convenience, arising from the circumstances of locality, is there not much more inconvenience to a great part of the northern portion of the county of York in coming to the York Assizes than there is in the West Riding coming to York?—The answer to that would be that very little business comes from the greater part of the North Riding, comparatively. I have all the Cause Lists for seven years, if the Commissioners wish to examine them.

102. Have you made them into a table, as you did with the prisoners?—Yes.

103. The tabular statement which you have made of the Cause Lists is correct, we suppose?—The tabular statement from the Cause Lists, and the tabular statement from the Crown Calendar I finished last night in my own office. I can speak to those. I can merely state, with reference to the Cause Lists, that they bring out a summary almost the same as in the case of the criminal business. If you look at the two tables you will find that the criminal business is between one-fifth and one-sixth. The number of causes from the West Riding for the seven years was only 532; and I find, from the examination which I have made, looking at the names of the plaintiff's attorneys, supposing that to be as good a test as I could have of where the business came from, that about 105 of that number came from Leeds.

104. What is the whole population of the West Riding?—About 1,300,000 at present.

105. Then, putting Leeds at about 200,000, it would not be quite one-sixth?—Not

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quite one-sixth. I now propose to hand in the Leeds Improvement Amendment Act of 1856, and to refer to the 18th Section of that Act.

106. Will you read the enactment?—"And whereas the Council are erecting a Town "Hall within and for the borough, with suitable accommodation for holding public "meetings and Courts of Justice, and the transaction of public business therein, and the "present Court House will, after the said Town Hall shall have been completed and "finished, be no longer required for such purposes, therefore it shall be lawful for the "Council from time to time, and when and as they may think fit, to maintain, fit up, "furnish, and regulate the said Town Hall for the purposes of the Town Hall of the said "borough, and for the holding of Courts of Oyer and Terminer, and Gaol Delivery and "Assize, and Nisi Prius, and Quarter, General, and Petty Sessions, and other Courts of "Justice therein, and for the transaction of business therein by the Justices," and so on.

107. This subject was brought before the Council?—This subject was brought before the Council, and it was a part of the business considered when the petition for the Bill was agreed to.

108. Did they express the opinion that they would provide accommodation?—Yes; they are providing it. A gaol is provided for the accommodation of about 20 cells, in addition to what is called the Leeds Gaol. I am very anxious to show to the Commissioners the railway accommodation to Leeds. I have handed in tables showing the railway accommodation, and I wish to call Mr. Commissioner Kitson, who is here, to prove them.

109. It is very good to York also?—I should show the great superiority of Leeds with reference to the wants of the West Riding.

[*A plan of the proposed building was produced*].

110. Are we to understand that the contracts are entered into for erecting this building?—It is almost completed.

111. In what part of the town does it stand?—Park lane.

The witness here stated that he had the Mayor of Leeds and Mr. Commissioner Kitson in attendance. Lord Wensleydale said the Commission had the facts, and it was not necessary to call the Mayor; and as to the railway accommodation, they could get that from the tables.

The witness withdrew.

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Mr. THOMAS STANDBRIDGE examined.

112. Are you the Town Clerk of Birmingham?—I am; and the Mayor of Birmingham attends the Commissioners with me.

113. On the part of the borough of Birmingham, what have you to state in favour of the Assizes being held at Birmingham?—We have to say that the borough of Birmingham, as your Lordship well knows, has increased of late, and grown into a most important borough, and the railway communication with it now, in all directions, and especially through those portions of the borough of Birmingham, or of the immediate suburbs of Birmingham, which are most densely populated, and in which the greatest amount of business is carried on, is so exceedingly easy and rapid that it would be very much better and much more convenient for suitors, jurors, and witnesses that Birmingham should be the Assize town of the county of Warwick, or, at all events, an Assize town of a district which may be hereafter nominated and defined by law, than the present Assize town of the county, viz., Warwick.

114. Do you speak to this list, headed "Borough of Birmingham," containing the merits of some of the matters proposed?—Yes.

115. That is your preparation?—It is.

116. Is it correct as to the statement of the population of Birmingham and the neighbourhood?—To the best of my belief it is.

117. Do you take it from the population returns?—Yes. There may be some little differences in respect to taking the population of the Parliamentary boroughs, but the substance is the same. The whole district is one inhabited town, and may be well so termed.

118. Does that map show the outlines of the county of Warwick?—Yes.

119. Birmingham is on the very confines of Warwickshire?—Yes.

120. This paper contains a correct statement of all the material facts?—Yes.

121. Have you any statement of the number of prisoners from Birmingham tried at the Warrick Assizes?—Yes. From the year 1848 to 1855 inclusive, there were 1,366 prisoners tried at Warwick Assizes, of which number 534 were committed from the borough of Birmingham.

122. Have you a separate paper containing that statement?—*The witness delivered in the same.*

123. You have at Birmingham now a local jurisdiction, which disposes of all cases except those for the Assizes, have you not?—Yes.

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124. There are an enormous number of prisoners tried at the Birmingham Sessions?—An enormous number.

125. We see by this list which you have just handed in, that the proportion of prisoners tried at the Warwick Assizes from Birmingham has diminished for several years past: to what do you attribute that?—Perhaps it is in consequence of the operation of the recent Acts of Parliament; for instance, the Juvenile Offenders Act. I do not know whether that may be the cause of it.

126. And the restoration of compound felonies to the Quarter Sessions?—Yes.

127. In 1848 there were 215 prisoners tried at Warwick, and of these 110 were from Birmingham. In 1855 there were 247 tried at Warwick, and 79 of those were from Birmingham. You commit your Sessions offences to the Assizes, if they happen to come before the Sessions, do you not?—No, only where the Sessions has no jurisdiction.

128. Is it not only of late years that you have had your local jurisdiction at Birmingham?—In 1839 we had the grant of the right of holding Quarter Sessions, and we have tried of late, upon the average, 125 cases at each Sessions during the year.

129. Have you been trying your own Sessions cases ever since 1839?—Yes.

130. Are all cases in which the Quarter Sessions have jurisdiction committed for the Sessions by the Birmingham Magistrates?—For the Birmingham Sessions.

131. Even although the Assizes occur before the Sessions?—Precisely so.

132. You do not commit to the first place where they could be tried. If the Assizes occur before the Sessions, or on the day that the Sessions are to be held, you do not commit for those offences to be tried at the Assizes?—No.

133. Can you give us any idea of the quantity of civil business which comes from Birmingham to the Assizes? Have you prepared any statement of that?—I have had considerable difficulty in that respect. There are no records, that I am aware of, from which I could obtain accurate information. I have a statement here which shows something like two-thirds of the causes at one Assizes originating in Birmingham.

134. Have you taken the Assizes, say for the last six years?—No; but I know from my own personal knowledge that a great amount of the business transacted at the Warwickshire Assizes arises from Birmingham.

135. On that list have you marked all the cases which have come from Birmingham?—Yes, in red ink, where the plaintiffs or defendants, or their attorneys, were from Birmingham.

136. You have not numbered them?—No, that might lead to a misconception. There are several cases from the immediate neighbourhood of Birmingham in which Birmingham Attorneys are engaged.

137. You think they amount to about two-thirds?—Yes. The population of Birmingham being equal to half that of the whole County of Warwick, and deeply engaged in mercantile affairs, occasioning frequent resort to civil tribunals, I think it fair to assume that two-thirds of the causes tried at Warwick are from Birmingham and its immediate vicinity.

138. Can you give us the average number of causes tried at Warwick in the last five years, of all sorts?—I can hardly reply to that question. I should think about 20.

139. There were nearly half from Birmingham in the year 1855?—Yes.

140. That is a correct account for the Assizes in March 1855, and also in July 1855?—Yes, to the best of my belief.

141. Are any persons deterred from trying their causes at Warwick by the difficulty of getting there?—I know that there is a good deal of complaint—constant complaint.

142. What accommodation have you at Birmingham for the Assizes?—We have no accommodation yet which would be fit, but we have a very ample site—the best site in the borough—upon which we could erect Assize Courts.

143. Has the subject ever been discussed in Birmingham publicly?—Repeatedly for years.

144. Have you any reason to believe that the town would go to the expense of Assize accommodation if the Assizes were removed there?—Knowing what I do of the public spirit of the inhabitants of Birmingham, I believe they would.

145. Has the question been mooted in the Town Council?—Yes, on several occasions, and communications have been had with Her Majesty's Government, on the subject, and the Town Council unanimously sanctioned the application to this Commission to induce this Commission to recommend the nomination of Birmingham.

146. At that meeting when this subject was discussed, was the subject of the expense of erecting public buildings for the purpose discussed at the same time?—It was referred to.

147. Was any estimate given of the amount of the expense?—None at all. The land to which I now refer cost 33,000*l.*, it adjoins the town hall, it is the finest site in the borough, and it was purchased originally for the very purpose of erecting courts and municipal offices, unless it is devoted to that purpose it will be of no other use.

148. But it has been abandoned on account of the expense has it not?—It has not.

149. Are your courts pretty good at Birmingham?—No; the courts are very bad.

150. Then in the event of an Assize being held at Birmingham, you would have to build both new courts and new lodgings for the Judges?—Yes.

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151. We understood you to state that it is the wish of the Council to have the Assizes held at Birmingham?—It is indeed.

152. Have you any proof that there is a general wish among the population of the town to have the Assizes held there?—I have no doubt that if a town's meeting were to to be called, the result would be in favour of the application now made by the Council.

153. You have no present knowledge of the feeling of the town?—Except as Town Clerk, and a native of the town, and I know the feelings of the inhabitants of Birmingham pretty well.

154. With what object do the Council wish to have the Assizes held at Birmingham?—They think that every institution which gives Birmingham a more metropolitan character must be an advantage to Birmingham.

155. It is for the sake of convenience to the town of Birmingham?—It is for the sake of the convenience of suitors, jurors, and witnesses.

156. When you talk of the convenience of suitors, jurors, and witnesses, that relates, we presume, to the suitors, jurors, and witnesses who are residents in the town of Birmingham?—Yes; and its immediate neighbourhood.

157. Speaking roughly, drawing an inference from the proportion of your causes and prisoners, that would be only one-third of the suitors, jurors, and witnesses of the county of Warwick?—I know that by some means a great proportion of jurors find their way from Birmingham, I do not know how it is, whether it is more convenient to summon them.

158. What is the whole population of the county of Warwick?—475,000.

159. Referring to your previous answer, have you any reason to believe that the proportion of jurymen who attend at the Warwick Assizes from Birmingham is greater than a fair proportion, looking to the population of the county?—I am only speaking from the observation of years, I have always seen a great many Birmingham men upon juries, the majority.

160. Speaking positively, the fact of your having a population of about 250,000, of course would account for a large number of Birmingham jurymen going to Warwick, but it would not prove that relatively there was anything unfair in the number?—I did not mean to insinuate that at all, of course the observation was an indefinate one, it was only from an observation of some years.

161. But of what fund do you contemplate providing the courts and judges' lodgings?—That fund we should have to provide by Act of Parliament; we are now about to make application.

162. By a rate?—By a rate.

163. There is considerable complaint of the amount of rate in Birmingham, is there not?—There is complaint among some parties, but the more intelligent of the ratepayers do not complain; they think the rate ought to be more. The Improvement rates are not sufficient, in their opinion. In the opinion of others, they are too high.

164. What would a rate of 1*s.* in the pound, in Birmingham, produce?—Something like 30,000*l.*

165. What does a penny in the pound amount to?—About 2,500*l.*, I think.

166. Have you formed any estimate of the cost of erecting courts and judge's lodgings, including the value of the land?—We have not. We have the land; three acres of land.

167. What the expense would be of erecting proper courts and lodgings you have not formed an estimate of?—No; we should conceive it to be something like 20,000*l.* or 25,000*l.*

168. What is the gaol accommodation at Birmingham?—The paper before the Commissioners shows it.

169. Is that gaol accommodation more than enough for the borough?—It is not.

170. Therefore, if Birmingham became the Assize town for the whole county of Warwick, or for the district which you contemplate, in either case you would have to extend your gaol accommodation?—Yes, and we have the means of extending it.

171. You are now extending the gaol accommodation, are you not?—Yes.

172. Just look at the paper, and state what the gaol accommodation is; how many prisoners you have at present, and what extension you would require?—We should require considerable extension, no doubt; because, by an arrangement with the Government, which became necessary in consequence of a legal difficulty, we have now fifty of our convict prisoners in Wakefield Gaol.

173. What is the gaol accommodation which you have?—For 486 prisoners—I think that is the correct amount; I am not sure whether it may not be more. There was an error in the return which the architect afterwards corrected. I think the number, as near as may be, is 486 prisoners on the separate system.

174. How many have you quartered elsewhere?—We have 50 at Wakefield. We are building 100 cells now, which are nearly completed.

175. Have you made any calculation of what additional accommodation would be required for prisoners?—We have not.

176. What is the time which is now required to go from Birmingham to Warwick by railroad. Is it an hour or less?—A little less than an hour; half an hour by express.

177. There are two lines of railway?—Yes. The average time would be rather more than half an hour.

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178. The distance is twenty miles, is it not?—Twenty-one miles.

179. We apprehend that, looking to your Assize business, the result would come practically to this:—As the thing now stands, one-third of the Assize prisoners tried at Warwick are removed from Birmingham to Warwick. If your request with respect to Birmingham were granted, two-thirds of the Assize prisoners would have to be removed from Warwick to Birmingham?—The suburbs of Birmingham are very populous, and contribute a considerable proportion of the criminal cases, in addition to those furnished by Birmingham proper. If these could be committed at once to the gaol at Birmingham, it would materially reduce the number to be removed from Warwick.

180. You do not want to have the Assizes held exclusively at Birmingham, but only an additional Assize. You do not want a transfer?—We should very much prefer, but of course it appears to be impracticable on the first view of it, that the district which is so intimately associated with us in manufactures and products, and which is so identical with us in its habits and feelings, should be taken in with us and constituted a separate civil and criminal Assize district.

181. You would wish to have an Act of Parliament to try the people from the mining districts of Staffordshire at Birmingham?—Birmingham is the metropolis of the mining and manufacturing district of South Staffordshire.

182. Setting aside the criminal business, do you think that the Town Council would build these courts, and make the accommodation, for the sake of having an Assize at Birmingham for civil business only?—I am inclined to think they would, although I should be careful not to pledge them upon that point. Should Birmingham be constituted the centre of a district, I apprehend that those portions of the adjoining counties included therein would contribute a portion of the expense of providing the necessary accommodation, and maintaining the same.

183. With regard to those proportions of prisoners which you have given, is the Birmingham portion exclusively Birmingham, or from that district?—From the borough of Birmingham that district furnishes an immense amount of criminal population.

184. Are there any other facts which you wish to state?—None other.

185. Are there many causes tried in London from Birmingham? Are you aware how that is?—Occasionally there are.

186. Do you think that those would be tried at Birmingham, supposing an Assize for civil business were held there?—Yes; I feel sure that they would.

187. Do you mean that they prefer coming to London to going to Warwick?—There are some peculiar cases in which they do go to London.

188. Do you mean to say that they prefer coming to London to trying at Warwick?—That may be the feeling of the attorneys. London is more interesting to some attorneys than Warwick.

The witness withdrew.

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Mr. Joseph Heron, Mr. Charles Gibson, and Mr. William Welsh, examined.

189. (*To Mr. Heron.*) Are you the Town Clerk of Manchester?—Yes. Mr. Gibson, the Town Clerk of Salford, is here, I believe, with a memorial. Mr. Welsh and Mr. Robinson, who have communicated, I believe, with Colonel Wilson Patten, attend on behalf of the Law Association of Manchester.

190. Will you give us the facts. Have you a statement of the number of prisoners from Manchester taken to Liverpool for trial? What have you in your hand?—The memorial to the Commissioners from the Corporation of Manchester. Perhaps the shortest plan would be to read it.

191. That memorial is, in fact, your case we suppose?—Yes. I am afraid I am more unprepared than is desirable. I was not at all aware that I should have the honour of appearing before the Commissioners until Thursday morning. Unfortunately I did not get the letter till Friday. I got the memorial adopted at once by the General Purposes Committee. I fancy that the facts which it is important for the Commissioners to know I shall be able to state; but if there should be any statistical information required, if the Commissioners will only allow me to take a memorandum, and send it up in a tabulated form, I shall be very glad to do so. I will read the memorial. (*The witness read the same.*) That is the memorial which I beg to hand in. I may, perhaps, venture to say, that it is more with reference to the criminal business, and the inconvenience which we sustain in that particular respect, that I should urge our case upon the consideration of the Commission.

192. Is there not an arrangement made only to take a certain number of cases before the grand jury?—There is, and it lessens the expense very decidedly. The grand jury take certain cases on particular days, and the witnesses, therefore, have only to be there on those particular days; and as far as the expense is concerned, in which we have the least interest, this arrangement certainly saves the country.

193. There would not be much advantage to the country in the expense of trying at Manchester as compared with Liverpool?—I think there would be a considerable saving. Of course, the expenses go out of the Consolidated Fund, and, therefore, it is not an argu-

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ment which we should be desirous of urging particularly upon the attention of the Commission.

194. That is a matter, however, to be considered?—Of course. As far as we are concerned the inconvenience to the jurors and the inconvenience to the parties who are taken from the town for the purpose of attendance is very great indeed, and the inconvenience also with reference to the police. We have a large number of cases. I have a statement here showing the number of cases that have been tried during the years 1853, 1854, 1855, and 1856, which I got prepared yesterday afternoon. I am only now speaking of the criminal cases taken to the Assizes. In 1853 we had 23 cases at the Spring Assizes; at the Summer Assizes 26; and at the Winter Assizes, 12; and the days that the Assizes lasted were, in the Spring,13; in the Summer, 9; and in the Winter, 5.

195. What proportion is that of the total number of cases tried?—I am sorry I am not able to state that. In 1854 the numbers were 23, 29, and 25; and in 1855, 18, 19, and 25.

196. Do you mean in the whole year?—Yes, at the Assizes; first the Spring, then the Summer, and then the Winter Assizes.

197. From what district do those prisoners come?—From the city of Manchester only, not including even the borough of Salford.

198. Not Salford hundred?—No.

199. With reference to that, would it not be easy to apply the modern system of bringing certain cases before the grand jury on certain days, so as to bring all the Manchester cases consecutively?—There is no doubt it would be a great advantage to us if it could be done.

200. (*To Mr. Gibson.*) Do you know the proportion of cases from Salford?—I do not, for I have been in London the last six weeks entirely, and have not been able to get up the statistics. However, I shall ascertain that proportion when I go back.

201. (*To Mr. Heron.*) Supposing that you had your cases tried consecutively, how many days do you suppose the Judge would be occupied in trying your Manchester cases?—I feel almost at a loss to express an opinion upon that point.

202. When the Judge sits down to a Liverpool Assize, you may take average of 10 cases a day on the criminal side?—I should think so; and ours would be the same. The largest number is 44. The average probably would be 25.

203. At each Assize?—Yes.

204. That would bring your attendance to something like three days?—Yes. There is no doubt that an arrangement of that kind would very much lessen that particular difficulty.

205. The arrangement already made has relieved you to a great extent, has it not?—I believe it has, although the return referred to is under the arrangement already made. I have the list down to the end of 1856, and I find that the days taken at the Summer Assize were 13.

206. The Assizes occupied 13 days?—But our witnesses were there in many instances.

207. That is a matter of choice?—It is not a matter of choice, I am sorry to say; we do not go there an hour before the time. Indeed, I believe we sometimes get rapped upon the knuckles for not being there before the time.

208. Was not the 13 days the whole length of the Assizes?—If it was we were obliged to have witnesses there. Our witnesses do not remain one moment beyond the time absolutely required.

209. You mean that some witnesses were there, not all?—Not all.

210. You may have had a robbery tried each day, perhaps a garrotte case, each involving four or five witnesses?—Yes.

211. You may have had, say half a dozen witnesses on each day?—No doubt it is obvious to the Commissioners, without my explaining it, that the cases are taken upon the days fixed, but the party who is responsible for the prosecutions and some of the police and some of the witnesses were there one or another during 13 days.

212. Have you yet told us, looking to an average of some time, the proportion of the whole number of Assize cases tried at Liverpool which comes from Manchester?—No; I am sorry that I cannot give the Commissioners that information; but there will be no difficulty in obtaining it—the Calendar would show.

213. Taking, say five years, you can give us the proportion of Manchester cases tried at Liverpool. Would it be about one-fourth from Manchester?—Probably so. To have our case before the Commission it should be the proportion of trials from the hundred of Salford, because my application is on behalf of the hundred of Salford. We are not seeking the Assize on behalf of Manchester only, but on behalf of the hundred of Salford.

214. Will you make a tabular statement and send it to us?—I will take care and do that.

215. Are your witnesses from the hundred of Salford in the habit of going backwards and forwards morning and night, or of remaining at Liverpool?—They are obliged to stay at Liverpool.

216. Why is that?—The distance is so great. One of the difficulties which we have to contend with is to keep them together. If they went away we should never get them back again. I may state that the accommodation we ask for applies to the following

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places:—Ashton-under-Lyne, with a population of 57,000; Bolton, 61,000; Oldham, 72,000; Rochdale, 98,000; Bury, 70,000; Middleton, 16,000; Dukinfield, 26,000; and Dean, near Bolton, 30,000. Now all those towns are within an hour's or half an hour's distance from Manchester. They are most of them 12 miles beyond Manchester.

217. They are to the east of Manchester?—Yes; from many of them the parties would have to come to Manchester before going to Liverpool.

218. Not from all of them?—Not from all, but from most of them; they would have to come an additional distance to Liverpool, as compared with the distance from Manchester to Liverpool.

219. In what respect would Bolton and Bury, which are very important towns, be better off in coming to a Manchester Assize than they are in going to a Liverpool Assize?—As far as Bolton is concerned, they would get to Manchester about as soon as they would get to the junction on the Liverpool line, because it is so much nearer.

220. How long have you been the Town Clerk of Manchester?—Since the Corporation was established in 1839.

221. Are you aware of a representation having been made to the Secretary of State by the Manchester attorneys about the propriety of having a separate Assize at Manchester for the trial of civil business, and that the present Lord Wensleydale was desired to take upon himself to settle the matter between the Liverpool and Manchester Assize, when he was the Senior Judge at Liverpool; that he saw the attorneys from Liverpool and Manchester, and had a long discussion with them; that it was settled between them that they were not to agitate the question any more, provided an order was made by the Court of Common Pleas at Lancaster for the Manchester causes to be all put down by themselves, and that accordingly such an order was made?—I might have been Town Clerk when that discussion took place, but I never heard of any such arrangement before.

222. The matter was compromised, and that order you will find amongst the rules of the Court of Common Pleas at Lancaster, which was the subject of arrangement between the two parties?—If the Commissioners will allow me, I only wish to put the facts before the Commissioners, and then we shall be quite sure that the advice which will be given to the Queen in Council will be such as will be satisfactory to all parties.

223. Have you ever petitioned the Queen in Council independently of this Commission?—Yes.

224. What has been the result of that?—We have had no answer that I am aware of.

225. When did you petition?—It was about 1849. There is no doubt that the arrangement which has just been referred to was a very great accommodation to the profession; but I am speaking with reference more to the criminal side with which the Corporation has more to do. As far as my case is concerned, I am anxious rather to put it upon that ground, because the gentlemen who represent the lawyers will be better able to speak to the difficulty or inconvenience with reference to the civil business.

226. What accommodation should you have at Manchester, if the Assizes were held there for the hundred of Salford?—I am not in a position to give a very satisfactory answer to that question. Before, and without reference to this Commission, steps had been taken by certain County Justices to bring the question before the magistrates at the next Quarter Sessions. We have long felt, and now feel, that the Assize Courts ought to be built out of a Hundred rate. We do not seek this change for the accommodation of Manchester alone, but for the accommodation of the hundred; and out of a Hundred rate any expenditure which might be required for the erection of perfectly satisfactory courts and accommodation might be defrayed without its being really felt as a hardship upon any portion of the district. In Manchester we certainly do not feel that we are in a position to erect, at the expense of the Corporation, Assize Courts. We have had to lay out nearly two millions in works that we could not avoid.

227. Would it be necessary to go to a great expense to provide the proper courts and lodgings?—There would be no difficulty about expense, even supposing it were 50,000*l.*

228. Do you think it is worth while to expend 50,000*l.*?—I have no doubt that the saving of expense to the inhabitants in one year would be far more than the interest of that money, because the expense to jurors is very serious, as well as the inconvenience; and I know that, in many instances, men are summoned from their employment, young men in warehouses, holding very good situations, who are obliged to be there ten days or a fortnight, and at the very greatest risk to their situations.

229. But they would be detained from their business at Manchester?—Of course they would; but they would only be detained a half or a quarter of the time, and there would be no expense; they would not be living at an hotel, and away from their families.

230. Would it not very much relieve you if, instead of the present arrangement, which we believe is principally regulated upon a consideration of the nature of the offence, the cases were divided according to the districts from which they came? The present arrangement is, that on a certain day burglaries shall go before the grand jury; the next day garrotte robberies; thus taking particular classes of offences. Would it not relieve you if, instead of that, they took on, say the first and second days, cases from Manchester, and on the third and fourth days, cases from Salford, and so on?—There is no doubt that that would be a very great additional convenience to the district, but I am

afraid it would not affect the question as regards the expense to prisoners; for instance, in taking their witnesses; and I am afraid it would not at all lessen the time or the inconvenience and the expense to jurors.

231. Your jurors only come for a week; there are two sets?—They are detained much more than that.

232. The second set may be, but not the first set; they always have a fixed time for discharge, namely, at the end of the week; the second set may be kept for two or three weeks?—Yes.

233. What is the whole number of jurors coming from Manchester, do you suppose?—I am sorry to say it is very large, and particularly with reference to special jurors; they nearly all come from Manchester and the district, and from Liverpool and the district of Liverpool.

234. The special jurors have been very much relieved by the special jury panel?—I am afraid that they do not consider that they are much relieved. Formerly they used to come in one case, and that case was pretty generally fixed, and they got away in a day. They are now summoned, and are detained almost as long as common jurors, and they consider it a very serious inconvenience.

235. Instead of 48 you have 300 or 400?—No doubt; but the inconvenience to the individuals was much less, because they came for one day, and got what would pay their expenses there and back again, little as it was. But they now feel that the special jurors are placed almost in a worse position than the common jurors. There is no doubt the panel will show how it is. I believe it will be found that the special jurors are taken from a certain class, and that a large proportion of them come from Manchester and Liverpool; in fact, they are merchants in Liverpool or merchants in Manchester.

236. Are there not merchants in all those other large towns which you have mentioned?—No doubt there are, and persons who ought to be just as frequently summoned; but I am afraid that that is not the case.

237. Then do you desire that there should be three Assizes, viz., at Lancaster, Manchester, and Liverpool?—Yes.

238. And your main grievance is, that in consequence of being mixed up with the business at Liverpool, your witnesses and jurors are detained there a considerable time?—Exactly so.

239. Would it be any boon to you to be taken back to Lancaster, where there is comparatively little other business?—I should say of the two that would be the more convenient arrangement. The expense of transit would be the same, or perhaps greater.

240. By that you would avoid the expense of new courts or judge's lodgings?—There is no doubt that is so.

241. How are your courts now; are they pretty good?—No; I am sorry to say we have no courts that we could suggest which would be at all suitable for the Assizes.

242. What is the practice in trying a case at Liverpool on the criminal side; what is the present arrangement?—I believe there are certain cases now which are fixed for each day.

243. If you conducted a prosecution at Liverpool, how should you arrange with regard to your witnesses for the day of the trial?—I believe there is a list fixed for each day, which is sent out at the beginning of the Assizes, of the cases to go before the grand jury. Our witnesses must all be in court on the morning of that day to go before the grand jury, and they remain in Liverpool till the case is disposed of before the Judge.

244. The Salford cases before the grand jury may come on before the trial of the prisoners from the West Derby hundred?—I believe so; I believe that it is not with reference to the locality from which they come, but the character of the case.

245. The practice used to be, to bring all the witnesses into the assize town at the beginning of the Assizes?—It is now modified as regards the criminal cases by fixing the days on which they are to go before the grand jury, and the grand jury, instead of getting away in a couple of days, or three days, do not get away under a week.

246. With respect to the Hundred rate you say that if the new courts are built they must be built by a rate upon the hundred of Salford, there is no power now to make such a rate for that purpose, is there?—Yes. I believe that the Queen in Council has power to put the magistrates in motion to lay out money in the erection of courts in any place where it is thought desirable to hold Assizes.

247. Not to raise a rate?—I believe the county magistrates can raise a rate under such circumstances; there is power to put them in motion to defray all expenses requisite to carry out the recommendation of the Queen in Council.

248. Do you mean by some general Act of Parliament?—I believe so.

249. Are you aware what the Act is?—I am not able to refer to it. I was speaking with the Town Clerk of Leeds and he said there was no doubt about the fact. He could not refer to the Act.

250. Do you mean for a hundred?— I believe so.

251. With respect to Lancaster, what is the distance from Manchester to Lancaster?—I believe about 50 miles.

252. And what is the time that is occupied in travelling?—Three hours.

253. Is it as much as that?—Yes. It would depend upon the train.

254. The business at Lancaster now is very small, is it not?—I believe very small.

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255. There are not above ten causes are there, on the average?—There is no doubt there are very few.

256. And not an average of above thirty prisoners?—Thirty-seven in the year.

257. Any difficulty arising from witnesses or jurors being detained while the business of that district was being disposed of would be considerably less than as regards Liverpool?—There cannot be a doubt about it.

258. Is not the expense of maintaining witnesses less at Lancaster than at Liverpool?—No. I rather think it would be more; because in small places like Lancaster they get into the way of charging a guinea a bed if you use it for one night only when there is anything like a press; in Liverpool the accommodation is so large that it does not make that difference in the prices, but I know that when the Assizes were held at Lancaster it was the case, the prices of everything rose when the Assizes took place because the accommodation was limited and the demand great.

259. You said something of the difficulty of keeping your witnesses together.—There is a difficulty in keeping our witnesses together at Liverpool which is less I believe at Lancaster. There would not be the temptation of crossing the water which there is at Liverpool.

260. There is a difficulty found in Liverpool in keeping them together is there not?—No doubt.

261. And there always is in a large town?—As far as the criminal cases are concerned, we have to put the witnesses under the charge of a police officer, and with all the precaution taken we cannot always keep them together.

262. And you are of opinion that that difficulty would be less in Lancaster?—I think there is no doubt that it would be less there.

263. Has the question been at all mooted in Manchester of going back to Lancaster?—I am not aware that it has, but I have no difficulty in expressing this opinion, that I believe, that on many grounds, it would be preferable to be at Lancaster rather than at Liverpool considering all the inconvenience to which we are subjected there.

264. You can hardly expect three Assizes to be held for the same county. Which would be the best that you should go to Lancaster or that Lancaster should come to you?—I should think it far better that Lancaster should come to us, because there would be about one to move instead of one hundred.

265. What would you do with the northern parts of the county?—I do not suggest it; I think it very desirable to have three Assizes, and I should have thought that it would have been less inconvenient to the Judges in fact. At present the Assize at Liverpool is so excessively long that I should have thought it was very objectionable.

266. If the Assize were held at Manchester, do not you imagine that there would be considerably more Manchester causes tried than there are now?—I have no doubt of it; and I think that is one strong reason why we should urge that arrangement to be made, because it is a proof that present arrangements operate to a certain extent as a denial of justice. I think that we should have the same conveniences afforded as they have in Liverpool, if it could be so arranged.

267. If that be so, the duration of the Assizes for the county would be lengthened?—It would be lengthened, no doubt, to a certain extent, but that probably would be the best ground that could be urged for the change.

268. Is there not, generally speaking, some increase of expense, and a lengthening of the cause, by trying it at home? Has it not occurred to you, in your experience, that people are very apt to multiply witnesses unnecessarily when they can have them at hand?—I think it quite possible that it would be so, but I think that that is pretty much in the hands of the Judge.

269. Did you never know even a message sent over to Manchester for more witnesses when they had already called 20 or 30 about the right of way through a street?—Yes; the fact is that that is one of the great hardships against which we have to contend, for Counsel compel you to have witnesses there to prove every conceivable point that can by any possibility arise; nineteen-twentieths of those points do not arise, but your witnesses are there, and you have to go to all the expense because Counsel will have provision made for every possible contingency. Now, we should save all that expense if we were at home. The Judge is not troubled with all those witnesses, for they dare not call them before the Judge; but there they are, and we have to pay their expense. Counsel require us to bring to the Assize double the number of witnesses that are ever examined. It is very possible that the witnesses would be there if the cause were tried at home, but they would be then at no expense.

270. What is the time occupied in going by railway from Manchester to Liverpool?—An hour and twenty minutes.

271. Are there not trains running every quarter of an hour?—No; there are about 10 trains a day; but we cannot rely upon that. I might refer to a case where the Judge disposed of the Assize very quickly on one occasion. There was a list of, I think, 45 causes struck out. That was because parties were fearful, or were unwilling to incur unnecessary expense in having witnesses there before they were wanted, and it so happened that a number of causes went of.

272. It was the first day of the Assizes?—It was, and a number of the first cases which were not ready.

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273. After all, it seems that the great pressure is on account of the criminal business?—That I was most anxious to put before the Commission, because I felt that the gentlemen who were representing the Law Association would be the proper parties to speak of the civil business; but I believe the pressure is not much less on that side than it is on the criminal side. I thought that the corporation had more properly to do with the criminal business than with the civil business.

274. There are some statistics as to the amount of criminal business from Salford of which we are not in possession, and which the Town Clerk of Salford is not in a position to give us at present?—(*Mr. Gibson.*)—I am not. I do not conduct the prosecutions in Salford; I merely conduct the civil business. I have nothing to do with public prosecutions after the prisoners get committed. I manage the case before the committing magistrate, and then it goes out of my hands.

275. (*To Mr. Heron.*) The great mass of your criminal business is disposed of either at the Recorder's Court or at the Quarter Sessions, is it not?—It is. We have nearly one thousand cases at the Quarter Sessions—seven or eight hundred cases, certainly, in the course of the year, but the number of Assize cases has rather increased than diminished under some recent changes made in the law. There are a number of cases which formerly were sent to the Sessions which are now sent to the Assizes. May I be allowed just to state the population of the hundred of Salford by the census of 1851, as compared with that of the hundred of West Derby. The population of Liverpool is 375,955, and of the hundred of West Derby 632,987. The population of Manchester and Salford, which may be said to be one place, is 401,321, and that of the hundred of Salford 937,793, and, of course, the hundred of Salford includes the towns which I mentioned before, which are all within a very short distance from Manchester.

276. Have you any map here which shows the extent of the hundred of Salford?—I have not, but I will take care and send one; I will send the ordnance map coloured showing exactly the hundred.

277. You are now increasing the prison accommodation in Manchester, is it more than sufficient for the borough at present?—It will be when the accommodation is finished. We are providing a much larger accommodation because we find it is not desirable to limit it to present necessities, and I believe that the accommodation will be ample for any purpose.

278. To what extent will your new accommodation exceed what the city requires for its own purposes?—I believe it will exceed, by several hundreds, the immediate accommodation required. We are nearly doubling our accommodation now.

279. What accommodation do you require for the city?—The gross number of prisoners for the city is five hundred and odd, but I will give you those particulars correctly.

280. You are building for one thousand.—We are building for nearly one thousand. I will give the gross number of prisoners as well as the accommodation.

281. Up to the present time you are not able to imprison your own County Court debtors, you are obliged to send them to Preston?—Yes. I will explain how that is. When our plans were submitted to the Secretary of State all the arrangements proposed for the detention of juveniles were struck out by the desire of the then Home Secretary, Sir George Grey, it being stated that other arrangements were about to be made for the detention of juveniles. Now we have all the juveniles to provide for; the consequence is, that our accommodation is insufficient because we have a large number of juveniles.

282. When did you have that answer from Sir George Grey?—Several years ago, when we were building our gaol, which we did at a very large expense.

283. Has Manchester taken any steps with regard to a reformatory?—No; it was merely with reference to the confinement of juveniles. Our plans originally showed cells for juveniles, but Colonel Jebb, under the direction of Sir George Grey, struck them out of our plans, and we, therefore, did not provide for the juveniles. The juveniles have remained with us, and we are now obliged to enlarge our gaol.

284. Is your proportion of juveniles very large at Manchester?—It is rather so.

285. Can you state what it is?—I cannot exactly.

(*Mr. Welsh.*) May I be allowed to state, with regard to civil cases, that I have taken the actual expenses paid to witnesses and attorneys in eight cases, which amount to 521*l.*, and if the cases had been tried in Manchester instead of Liverpool the expenses would have been 152*l.* I wish to put in this statement. (*The witness delivered in the following paper.*)

WITNESSES AND ATTORNEYS.

	Liverpool. £	Manchester. £
No. 1	116	31
No. 2	126	39
No. 3	73	30
No. 4	51	14
No. 5	47	15
No. 6	31	8
No. 7	27	7
No. 8	50	8
	£521	£152

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(*Mr. Heron.*) That is, assuming that the length of the Assize is the same in both cases; it is rather unfavourable for the purpose for which it is put in; it is taking the time which the witnesses are paid for as the same in both cases.

286. (*To Mr. Welsh*). What proportion of causes go to Liverpool?—One-third are from the hundred of Salford.

287. On what length of time is that average taken?—Four years.

288. That is the average of the last four years?—Yes.

289. Are you immediately connected with Manchester?—I am.

290. Do you know whether there are any compositions of actions there so as to bring them within the County Court, which would otherwise be tried at the Assizes?—I cannot speak to that.

291. What proportion of the causes tried at Liverpool come either from the city of Manchester or from the borough of Salford?—I cannot tell that; but they form the great majority of those from the hundred of Salford.

292. We understand you to say that one-third of the causes tried at Liverpool come from the hundred of Salford?—About one-third.

293. Without saying which come from the city of Manchester?—Yes.

294. (*To Mr. Heron*). Has the subject of an Assize at Manchester ever been mooted at Manchester?—Yes; and the memorial which was sent up to the Queen some time ago was adopted at a meeting of the Town Council. This memorial which I have handed in to-day was adopted at a meeting of the General Purposes Committee, which consists of about twenty-four members, the Mayor being one. We had not time to bring the subject before the Council, or no doubt it would have been adopted there.

295. Was the question of expense considered by the Council?—Only in this way. It has always been a suggestion by us, that the expenses of the Court should be paid out of the Hundred rate. Manchester represents more than one-third of that expenditure, and with Salford, I should think we must represent two-fifths, or even more than that; but the city of Manchester alone represents more than one-third of the whole expenditure, which would have to be incurred, whatever it might be. The subject is to be brought before the magistrates at the next Quarter Sessions. In fact, notice was given quite independently of this Commission, and without being aware at the time that this Commission was sitting.

296. When will the next Quarter Sessions be held?—I believe they will be in April.

297. Are those the Quarter Sessions for the hundred?—Yes. They are held always at Salford, and I believe there is some distinction between the hundred business and the county business. The general county business is transacted at Preston, and the hundred business, I believe, is transacted at Salford.

298. Are there no County Sessions held in Manchester?—No.

299. Do the cases from Preston go to Liverpool now?—No; to Lancaster.

300. Does the Preston criminal business go to Lancaster?—Yes.

The witnesses withdrew.

Adjourned to Friday next, at half-past 10 o'clock.

Friday, 27th February 1857.

THE HON. MR. JUSTICE CRESSWELL IN THE CHAIR.

H. G. Horn, Esq.

27th Feb. 1857.

HENRY GEORGE HORN, Esq., examined.

301. You have been engaged, have you not, in taxing bills in criminal cases on the Northern Circuit?—Yes; at Lancaster and Liverpool.

302. Can you give the Commissioners any information with regard to the expenses of prosecutions, and as to whether there has been an increase or decrease in the expenses of late years upon the average?—I think that Sir John Bayley is provided with the general averages. I have here two periods: the winter gaol delivery of last year, and the winter gaol delivery of the year 1855. I think that since I have been engaged in taxing at Liverpool there has not been any important diminution or increase.

303. When did you commence your present duties on that Circuit?—In December 1850.

304. Had the system of sending only a certain number of cases before the grand jury each day been established then?—Yes, it had.

305. Do you think that that arrangement could be carried still further for the benefit of the public by having the cases not sent in classes before the grand jury, but from particular districts, for instance, say, cases from Oldham on one day, cases from Bury or Rochdale on another day; cases from Manchester at a particular time, and cases from Salford at a particular time, so as not to collect the police officers from the whole district at one and the same time?—I think it would be attended with further improvement.

306. At present if you take eight or nine burglaries on the same day, there may be one from Ashton, and another from Bury, and have the police brought together from all the districts?—Yes.

307. What is the average expense of a prosecution at Liverpool?—There is a great difference between the years 1856 and 1855. The general average now is about 20*l.* or 21*l.*

308. Have you any average for Liverpool as distinguished from other places?—That is the only one that I have brought.

309. I do not mean the Liverpool Assizes, but the borough of Liverpool?—I think that in the borough I should put the average at about 10*l.* a case.

310. Do you mean the cases tried at the Assizes?—No; at the Borough Sessions.

311. I mean crimes committed within the borough of Liverpool, and tried at the Sessions?—No; I have not.

312. Can you give the Commissioners the means of making a comparison between the West Derby and Salford hundreds?—I am not prepared with that.

313. Do you tax the costs also at Lancaster and at Carlisle?—Only at Lancaster, not at Carlisle.

314. What is the average expense at Lancaster as compared with Liverpool?—This last time it was very low, but generally Lancaster is much larger than Liverpool.

315. Do you mean that the average expense at Lancaster is greater than the average expense at Liverpool?—Yes.

316. Can you account for that?—I account for it by the larger number of days taken to travel over the Sands; three days are always allowed, one day for coming, and one day for returning, besides the day of attendance. I have not given the amounts of the averages at Liverpool in the winter of 1855 and the winter of 1856. In the winter of 1855 it was 31*l.* 13*s.* 2*d.* each case. That I think is about 7*l.* more than any average since I have been in the habit of going there.

317. There being one Judge (Mr. Justice Wightman) alone?—Yes. In 1856 it was 20*l.* 1*s.* 3*d.*

318. Then there were two Judges, were there not?—Yes; or rather a Judge and a Commissioner.

319. Was the business as carefully divided before the grand jury in 1855 as in 1856? There was only one week taken for the attendance of the grand jury, and there being only one Court sitting there was no division as to the grand jury.

320. But, with regard to the grand jury, were the number of cases taken by them each day limited in the same manner as at the Summer Assizes or the Spring Assizes?—Yes, they were limited in the same way.

321. Have you got the number of cases at those two Assizes, so that the Commissioners may see the whole saving?—In 1855 there were 122 cases, and in 1856 there were 94 cases. The smaller number of cases gave some advantage to 1856; and there is another advantage in favour of the year 1856 which I ought to mention, namely, that the Act of Parliament abolishing the Clerk of the Crown's fees came into operation in that year, and the discontinuance of the Judges' Officers' fees, which together would make a reduction of at least 3*l.* a case, without reference to anything else. The abolition of which fees will reduce all future averages in the same way.

322. The Government gain nothing by that, as they pay a compensation to those Officers. Do they not?—Yes; and that comes to the same thing. They pay an annual salary founded on the amount of the fees.

323. At present there is no saving?—No; and there will not be in future I think; a saving will always be effected when two Judges go to Liverpool.

324. The saving to the Government would be about 7*l.* a case, would it not?—About 7*l.* I think. In 1855 the average would have been much greater if Mr. Justice Wightman had not fortunately procured the assistance of Mr. Henderson, the Recorder, who sat for him no less than five days.

325. You cannot state to the Commissioners the difference between the average cost of a Manchester case tried at the Liverpool Assizes and a Liverpool case?—I never separated them with that view.

326. Do you consider that if Assizes were held at Manchester as well as at Liverpool there would be a considerable saving in the prosecutions from Manchester and its neighbourhood?—Not a great saving. I take this as the basis of calculation:—There is an average of 25 cases from Manchester each Assize, and I consider there are about six witnesses in each case. The railway travelling of those witnesses, I apprehend, is all that you would save. The railway fare is 12*s.* first class, there and back, and 8*s.* second class; and I think you would save six times that amount.

327. Are they not frequently kept two or three days in Liverpool?—Yes; they are kept two or three days in Liverpool sometimes.

328. Supposing that they are kept two or three days in Liverpool, they would have a larger allowance, would they not, when they are kept in Liverpool than they would have if they remained at home in Manchester?—I think not; unless you make an arrangement to pay, if they live in the Assize town, only half the attendance, then there would be a greater saving.

329. Is there not an arrangement to that effect now?—Yes, as to Liverpool witnesses.

330. You would save, besides the travelling expenses, half the daily allowance?—Yes, you would. I should like to make a suggestion which has occurred to me. The expense of witnesses is a very small portion of the whole expense of a prosecution in some cases. I made a special note of there being only 7*s.* 6*d.* in one case, and only 5*s.* in another, allowed for the witnesses' expenses.

331. Those were the cases tried at the Liverpool Sessions, were they not; and cases arising within the borough of Liverpool?—Yes, otherwise the expenses would have been double.

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332. If they had been sent to be tried at Manchester, would not the expense be greater?—Yes, the expense would have been double, the railway fare being added, if they attended only one day.

333. And so on for every day that they would have been kept?—Yes.

334. Is not the principal cause of the greater expense of a prosecution at the York assizes the number of witnesses who are kept from their homes?—Yes, if kept for a number of days.

335. The fees of counsel and attorneys are the same, whether the case is tried on the first day or the last day; they do not allow them so much per day?—In one case they allow the Attorney one guinea a day for the whole time that he is there.

336. At what Assizes is that?—At Lancaster and at Liverpool.

337. At York they give them so much a case, do they not?—I think it is very much the same mode of allowance; there is a slight difference between them, but not much. An attorney for his attendance has one guinea a day in one prosecution, and a single guinea in every other prosecution after the first, and until he has tried his last case. You do not know how many days he will have been there; that comes under the head of what they call "Attorney's Journey."

338. Is he allowed anything for expenses?—He is not allowed travelling expenses, but he is allowed other attendances, amounting to about 3*l.* each case; for subpœnas of witnesses, 5*s.* each case; then 10*s.* a sheet for his brief, and one guinea in each prosecution after he has had a guinea a day in one. I think the average that an attorney gets is 8*l.* in each prosecution.

339. He is paid for his work in every prosecution?—Yes.

340. Besides the guinea?—Yes.

341. That is a sort of retainer, is it not?—No. The retainer is 6*s.* 8*d.*, being the first item in his bill.

342. Supposing that Manchester cases were sent to Lancaster, instead of to Liverpool, in your opinion would that increase or diminish the expense, supposing cases from the hundred of Salford were sent to Lancaster?—Unless Lancaster is somewhat nearer to the hundred of Salford, that would not make any difference.

The witness withdrew.

Sir J. Bayley, Bart.

Sir JOHN BAYLEY, Bart., examined.

343. You have been for a good many years Clerk of Assize on the Northern Circuit?—Yes.

344. Since what period?—Since 1829.

345. You have had considerable experience in taxing the bills of prosecutions have you not?—Yes.

346. Can you state what was about the average cost of prosecutions in Yorkshire when you first succeeded to the office of Clerk of Assize?—I cannot tell you when I first succeeded, but ten years ago the Government called for a return, in the year 1849, of the three preceding years, 1846, 1847, and 1848, and that shews that, in the year 1846 there were 242 prosecutions in Yorkshire, which cost 11,448*l.* 16*s.* 5*d.*, and the average of those 242 cases was 47*l.* 6*s.* 2d., that is, in the three circuits.

347. There was a Winter Circuit in 1846?—Yes. It began in 1841. In the year 1847 there were 265 prosecutions, which cost 12,944*l.* 19*s.* 2*d.*, and the average of those was 49*l.* 2*s.* 10*d.* each. In 1848 there were 291 prosecutions, and they cost 15,518 6*s.* 8*d.*, and the average of those was 53*l.* 6*s.* 6*d.*

348. Is there any circumstance connected with the criminal business of that year accounting for the increase of the expense?—Nothing.

349. Since then have the expenses been diminished?—Yes, considerably. In consequence of that Return I was called upon to devise any means I could to lessen the expenses, and then I hit upon the plan of apportioning the business to go before the grand jury, and giving the Crown Court only about as much to do each day as they could get through, leaving a small arrear to go over to the next morning; and that I have carried on from the year 1849 up to the present time.

350. Will you explain a little more fully what this arrangement is, and how you give notice to the parties?—I have their depositions sent up to me, at least all that I can get. There is great difficulty in getting them, and I have more difficulty in Lancashire than in the counties under my immediate jurisdiction, because I have no direct authority there. I manage to get them sent up to me in London. I have all the Yorkshire ones up already; all the whole circuit. I have had fifty-three sets up from Liverpool. Then I go through them, read them all, and I form my own judgment as to how long each case will take, and then I make a division, regulated in some respects according to the Judge who is to try; some try faster than others; and I assign to the grand jury as many as I think will fully occupy the Court the whole day, and leave two or three over, and that list is printed and published in the newspapers, and a copy is sent to every attorney.

(A copy of one of the Lists was handed in.)

351. Do you make those lists of cases merely upon a calculation as to the length of the cases, or do you arrange them with reference to the parts of the country from which they

come?—Sometimes the Judge, for instance Mr. Justice Wightman, would order you at Liverpool to put all the cases from Preston together, and all the cases from another part together, and so on; all the Manchester cases together, and all the Liverpool cases together, but that does not work well. We generally put the Leeds cases, if we can, together, and the Wakefield cases all together; and one thing which I endeavour to do is this, if one attorney has more prosecutions than one, I put all his together. At Leeds the prosecutions are in the hands of two attorneys entirely.

352. The Leeds Magistrates generally bind over the chief constable to prosecute, do they not?—They took the opinion of counsel some years ago, as to whether they could not appoint a public prosecutor, and they were advised that they could not, but that they could attain the same object in another way, which was to bind over the chief constable in every case, and make him employ an attorney of their own naming. Two persons of the name of Markland and Rawson, are the two persons at Leeds who have all the prosecutions between them, and they divide the profits between themselves; if there are twenty cases from Leeds, one takes ten and the other takes ten.

353. Are they partners?—No: in the year 1854 the cost of the prosecutions in Yorkshire was 7,274*l.* 5*s.*, and in 1855, they cost 5,630*l.* 4*s.* 8*d.*

354. Can you give the average for 1854?—I can give you the average for each Circuit, but I have not made it out, so as to shew again the average divided for the whole. The highest average in 1854 was 30*l.* 17*s.* 10*d.*

355. Of any case on the Circuit?—No; This is Yorkshire only. It happens that in 1854 the winter was the highest average; 107 prosecutions cost 3,305*l.* 15*s.* 4*d.*, which made the average for each 30*l.* 17*s.* 10*d.*; and the lowest was in the summer, 29*l.* 17*s.* 9*d.*, that was in 1854. In 1855 the prosecutions on three Circuits cost 5,630*l.* 4*s.* 8*d.*; and the spring average was 27*l.* 4*s.* 11*d.*; summer, 30*l.* 3*s.* 4*d.*; and in the winter, 25*l.* 15*s.* 3*d.* In 1856 the prosecutions on three Circuits cost 6,189*l.* 9*s.* 4*d.*; and the average in the spring was 28*l.* 19*s.* 6¼*d.*; in the summer, 28*l.* 18*s.* 6*d.*; and in the winter, 24*l.* 1*s.* 3*d.*, which is the lowest average I have had.

356. Can you give us any idea of the average from different places; for instance, the average of Leeds, the average of Wakefield, the average of Settle, or Skipton, and some of the remote places?—I can tell you what any prosecution cost, taking the winter for instance, I will take the Leeds cases; No. 18 was a Leeds case, that case cost 10*l.* 11*s.* 4*d.*, and occupied one day.

357. Take a case from Settle, or Halifax, or Huddersfield?—I have Skipton before me, "John Robinson, Skipton, 29*l.* 2*s.* 9*d.* four days".

358. What was the number of the witnesses?—My book does not shew that.

359. Now take Huddersfield, which is a very remote place?—"Huddersfield, Wright Brown, 23*l.* 10*s.* 10*d.*, two days." I will give you a Doncaster case, "13*l.* 10*s.* 4*d.*, two days."

360. You stated that you thought that the plan of taking the cases from Leeds one day, and from Wakefield on another day, did not work well, where is the difficulty?—I do not think I can so well call that to mind, but we did find a difficulty in it. I did not find so much difficulty in Leeds, because there are only two attorneys employed, and I always take their cases, if I can, together.

361. With reference to Newcastle, what is the average of the prosecutions there, or the average of Durham?—At Durham, winter 1856, 43 prosecutions, cost 606*l.* 7*s.*; average of each, 14*l.* 2*s.*

362. To what do you attribute the much smaller cost of these prosecutions?—It is because they try at the Durham Assizes a great many cases that are only properly Session cases, very small cases. Newcastle is about the best in the whole Circuit, and the cheapest. Ten prosecutions cost 81*l.* 14*s.* 10*d.*, and the average of each was 8*l.* 3*s.* 5*d.*

363. Are not a good many Newcastle cases mere Session cases?—Yes; some of them are; they are very well got up.

364. There is a separate Commission for the town, is there not?—Yes? At the last Winter Assizes for Northumberland, there were 13 prosecutions, which cost 243*l.* 10*s.* 10*d.*, and the average of each was 19*l.* 8*s.* 4*d.*

365. Newcastle being in one corner of the county, in some of them, they had to travel very long distances?—Yes; the travelling expences for Northumberland come very heavy, the Berwick cases come eighty miles.

366. Now take Cumberland?—In Cumberland 11 prosecutions cost 192*l.* 1*s.* 8*d.*, and the average of each was 17*l.* 9*s.* 3*d.* Westmoreland, for a small county, comes heavy, two prosecutions cost 33*l.* 0*s.* 6*d.*, and the average of each 17*l.* 3*s.* 6*d.*

367. Now Lancaster?—Lancaster, summer, seven prosecutions cost 161*l.* 7*s.*, the average of each was 23*l.* 1*s.*

368. Some of them came from a considerable distance?—Yes.

369. Is there the same allowance to attorneys in Lancaster that there is at Liverpool?—Yes.

370. Now Liverpool?—Liverpool, summer, 126 prosecutions cost 2,306*l.* 6*s.*, the average of each, 18*l.* 6*s.*

371. Have you the means of telling us the cost of the prosecutions at Liverpool, and the cost of the prosecutions at Manchester, or have you taken an average for those two places?—No.

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372. Have you marked the Liverpool cases?—Yes.

373. Will you read half-a-dozen of each?—Liverpool 12*l.* 17*s.*

374. Was that in the case of an offence committed in Liverpool itself?—Yes; John Birch, 11*l.* 4*s.*, 13*l.* 6*s.*, 11*l.* 2*s.* Then from Manchester, 13*l.* 11*s.*, 9*l.* 2*s.*; 21*l.* 1*s.* and 24*l.* 17*s.*, they were kept longer; the others were kept one day, those two were kept four.

375. Under the new system of dividing the business, can you state to the Commission how many cases the grand jury had to dispose of altogether, and how many days they were doing it?—I have a statement here shewing the course of the business for the summer of 1856, Mr. Justice Willes.

376. How many cases were there altogether?—126.

377. How many days were the grand jury occupied?—Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday; grand jury discharged at 5.45. p.m. on Saturday; six days.

378. How many of those cases were disposed of by the grand jury on the last day on which they sat?—33.

379. Just turn to the former Assize or two, and state how it was; whether the performance of the grand jury on the last day was allowed much to exceed former days?—At Liverpool, spring, the grand jury had, the first day, 19; the second day, 14; the third day, 16; the fourth day, 15; the fifth day, 15; and the last day, 16, that is more than usual.

380. Take another instance?—Liverpool, winter, 1856, 28 the first day, 19 the second, 16 the third, 34 the last day, when the grand jury were discharged.

381. There was a very large number for each day?—Yes; there were two Judges.

Do you think that the division of the business before the grand jury could be carried a little further, or do you think the Judges have allowed too many cases to go before the grand jury, and that they might, without any impediment to the dispatch of business divide it still more minutely?—I think it might be better divided than it is, but the difficulty is to get a Judge to allow you to keep them beyond a certain time, some Judges will and some will not.

383. I suppose the grand jury press for more bills if the cases you have set down for a particular day are disposed of early?—They do not like being kept. They like getting through their business as fast as they can. Some Judges think, I know, that they ought to sit the whole Assizes.

384. Is there any arrangement similar to this at York, at Durham, and at Newcastle?—Yes. Whenever I find from the state of the business that the Courts are pretty sure to sit two days, I divide the business; but I may say, as a general rule, that the grand jurors do not like it.

385. If inconvenience is felt in counties where there is a police force, in consequence of policemen being brought from various districts at the same time, could that be obviated by an arrangement to take the cases from particular districts only on the same day?—I think it might, to a considerable extent; and in making any arrangement of this kind, I always do the utmost I can to consult the convenience of the most people. For instance, take a Winter Assize, I always put one attorney's prosecutions in one Court, and I do not subject him to the chance of having one prosecution on in one Court, and another at the same time in another.

386. The question I put was with reference to a statement made from Manchester, that the Salford hundred was put to an inconvenience from having their police brought from various districts at the same time into Liverpool, so that, say 100 were collected in different cases at the same time, might that be obviated by taking the cases from Ashton on one day, supposing them enough; from Oldham on another; from Bury, and from Rochdale, and so forth, at different times?—I think it would be beneficial.

387. Arranging them by districts, rather than by classes of cases?—I arrange by the length of the cases more for each day. I would give two or three that would last two or three hours apiece. Those that I calculate would last an hour are short cases. I give them some long cases and some few short ones, the object being to get them over, and get them disposed of as soon as they can.

388. If two or three prisoners pleaded guilty in those long cases, that would leave the Court idle, would it not, for a considerable part of the day?—In reading the depositions you can form a pretty good judgment of the line that a prisoner is going to take—very often you can—but I could do it much more accurately if in all cases I could get the statements of the prisoners sent up with the depositions. I am sorry to find, that in many of the Manchester cases, and the Salford cases, the depositions come up without any statement of the prisoners.

389. That is quite irregular, is it not?—Quite irregular. I have no means of remedying it.

390. You referred to Manchester?—Yes. I received twenty yesterday. It has been spoken about before.

391. Suppose grand juries were done away with altogether, do you conceive that that would make a very great difference in the cost of prosecutions?—Yes. I do not think you could do away with them in all cases. If you could do away with them altogether, it would be an enormous saving of expense.

392. Then you might arrange cases according to the convenience of the parties?—Yes.

393. How would that operate to produce so much diminution of expense?—Suppose the Assizes at York or at Liverpool to last a fortnight, you are only allowed to keep the grand jury a week, and all must be there before the grand jury are discharged.

394. But you might be allowed to keep them longer?—The Judges will not do that; it is very difficult. I had much up hill work to get as much latitude as I have. Now the Judges mostly leave it to me; but I am afraid to keep them more than a week.

395. Suppose the grand jury done away with, you would divide the business into a certain number of days?—Yes.

396. Some Judges then would be apprehensive of running short of business for some days, and so call upon you to put a longer list than was necessary. Would not that have the same effect as sending a longer list before the grand jury?—No; because taking all the Counties, you have a great many prisoners come in during the Assizes, and you can put them forward, and fill up with them.

397. You must have the witneses there?—Yes. I constantly send for them by telegraphic message; if I think a case is not likely to come on after a bill is found, I send them all home again, and have them back, and I save a great deal of expense by it.

398. You said that you did not think the grand jury could be done away with altogether. Do you contemplate dispensing with it in certain cases only?—I think wherever you have a stipendiary magistrate, the cases are so well investigated that they do not require to go before a grand jury, and I think that would be a great relief. I cannot help thinking that it would be a good plan to arraign every prisoner on his indictment, and take their pleas.

399. Do you mean when before the magistrate?—No, at the Assizes, and have the Indictment ready against him.

400. Before it is presented to the grand jury?—Yes, I think it would be a very good plan. A great many men do, and would plead guilty, and you dispose of them at once. There are two classes of cases that need not go before a grand jury, one is when a prisoner pleads guilty, and another is where there has been a previous investigation before a stipendiary magistrate.

401. Would it not save still more expense if the prisoner pleaded before the magistrate?—It would certainly. I suggested that once before, that they should plead before the magistrate, and that the magistrate should record the plea, and send the prisoner to the Assizes for sentence; but I would not let the justices sentence him. There are certain cases, for instance, cases for nuisances and road indictments, in which parties must have the power of going before a grand jury. I think I would send all those cases before the grand jury where the committal was by a county or borough magistrate.

402. Do you find in your experience any great difference in the mode in which cases are got up, taking those before stipendiary and ordinary magistrates?—Very great. I do not think there is any inquiry before the grand jury necessary where the case has been before a stipendiary magistrate, and I believe all of them are appointed with the sanction of the Home Office.

403. Is there a considerable difference in the proportion of acquittals and commitments between the stipendiary and other magistrates?—Speaking from general experience, I have no doubt that it is very rare that a man committed by a stipendiary magistrate gets off.

404. Is that because he is more careful in committing, or more careful in getting up the case?—I think more careful in committing. In such a place as Leeds, where they send one fourth of the prisoners to York, they have a separate jurisdiction, and a separate rate, and I think they ought to be compelled to have a stipendiary magistrate.

405. Have you any other information to give the Commissioners?—As to Circuit business none whatever.

406. With respect to costs, I observe that the lowest average at York in 1856 was considerably above that at Liverpool?—Yes.

407. Do you account for the York average being higher than that of Liverpool, by the greater extent of the county, and the distances the witnesses have travel?—Yes.

408. There is no other differenc?—Not that I think of.

409. Would not the large suburbs of Liverpool, which fall into the county, rather diminish the average of the cost, in comparison to York?—That may be so. I think it would be very desirable, if we could have a third Judge on our Circuit.

410. Do you think there would be an advantage in having a second Assizes at Leeds?—I think not. It would be very disagreeable to the Bar I think, and I do not think that the saving of expense would be worth it.

411. Can you give an opinion as to Wakefield, upon the same point?—I do not think that Wakefield sends so many cases as Leeds does.

412. But with respect to its relative situation to the large towns?—I think the expense of the travelling of the witnesses is but a small sum—it is not on the average above a quarter of the whole cost.

413. It is the expense of their detention in towns?—Yes.

414. Before this division of the business every case was supposed to come on, on the first day; whether it did come on, or did not, they always charged for it?—Yes.

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415. In your opinion no advantage, as far as criminal business is concerned, would be gained by holding a second Assizes, either at Leeds, or at Wakefield?—In my opinion, decidedly not.

416. With reference to witnesses, who were wished to come forward for prisoners, would it not be an advantage to them to be able to bring forward their witnesses?—It might be, and I think where *bonâ fide* witnesses are called they ought to be paid for just the same as the witnesses for the prosecution, if the Judge is satisfied they are *bonâ fide* witnesses.

417. You think it would be for the advancement of justice that a Judge should have the power to order an allowance to witnesses for a prisoner, as well as for those for the prosecution?—Certainly.

418. With reference to juries in criminal cases, in your opinion is it a hardship that they should be compelled to attend without any allowance?—I think so.

419. Have you heard any complaints on that subject?—Never, until an Act that I drew a great many years ago; we used to have only one panel for the whole Assizes, now we have one for each week.

420. One panel of forty-eight?—Seventy-two. The Act that I drew is now incorporated word for word in the Jury Act, but that was long before, which enabled Yorkshire, and the large counties, to have two panels. Ever since then we have had two in Yorkshire, and two in Liverpool.

421. Two panels of seventy-two?—Yes.

422. What is your opinion of the effect of a Judge calling in a counsel to assist him to try prisoners?—It is an enormous saving of expense to the Government.

423. And as a matter of course saves the inconvenience of detention to the prosecutors and witnesses?—Yes. It has a twofold effect; it is an immense saving of time and trouble to the prosecutors and witnesses, and an enormous saving of expense. At Liverpool, in the summer, we had a second Court sitting for several days, and I made a calculation as to the saving, and the saving was about 1,500*l.*

424. That practice is invariably resorted to in York, and at Liverpool, when there is a heavy calendar, is it not?—If you can get the Judge to do it—some Judges will not; Lord Campbell, the only time he came, set a second Court to work the first day, and kept it going.

425. There are many Judges who refuse it?—I think most of them are unwilling. I have often had to press them more than I liked.

426. Some of the Judges think it is their duty to transact that business which belongs them?—Yes.

427. Can you at all state, from your great experience, what the effect upon the public mind is, of a counsel presiding who is not a Judge?—I should say that they do not think it is so good as coming before a real Judge.

428. Has it any bad effect which you would consider a serious evil?—I do not consider that it has any effect at all. I think they try cases as well as some of the Judges.

429. That being your opinion, what do you think is the effect on the public mind? Is the prisoner as well satisfied?—That I cannot say.

430. If that practice were abandoned, the cost of prosecutions would be considerably increased?—Very much indeed. In the winter of 1855, when only one Judge went to Liverpool, Mr. Justice Wightman, he got the assistance of the Recorder for several days, and that saved 1500*l.*

431. I suppose it very seldom happens, either at York or at Liverpool, that the civil business is finished before the criminal, so that the Civil Judge can assist?—Very seldom. At Liverpool very often on the first day the Civil Judge cannot get on with his work, and he will try prisoners. That is sometimes the case at York, and I allow for that in the arrangement always.

The witness withdrew.

(A Deputation from Bristol was called in.)

Mr. Daniel Burges.

Mr. Daniel Burges examined.

432. You are Town Clerk of Bristol?—Yes.

433. Can you give the Commissioners some information respecting the civil and criminal business arising in the City of Bristol?—Yes.

434. Will you tell us whether, in the last ten years, the criminal business going from Bristol to the Assizes has increased or diminished?—The average, I think, has been much the same; not any great increase.

435. Can you state what the business was last year, at the Spring and Summer Assizes, going from Bristol to Somersetshire?—During last year there were three Assizes in the county of Gloucester, and there were 18 prisoners committed to take their trial at Gloucester. There were 75 witnesses for the prosecution, and 16 policemen, I think, were engaged. We only commit to Gloucester; all offences triable at the Assizes go to Gloucester.

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436. What distance are you from Gloucester?—36 miles.

437. What time is occupied by railway?—About two hours.

438. There is a communication by electric telegraph, I presume?—Yes.

439. With reference to the civil business, can you state whether, in the last 10 years, it has been on the increase or decrease?—It has certainly been on the decrease since the establishment of the County Courts.

440. To what extent?—I am hardly prepared to give the number of cases, but I think, at the last Assizes, the number was certainly lower than we had had them for many years.

441. What was the number?—I think there were not above 13 or 14 causes put down. I know more of the criminal business than of the civil business.

442. It has been suggested that there are a good many causes entered at Bristol, because it falls last on the Western Circuit, and that therefore people come there from any distance to have causes tried?—They do.

443. I suppose the same thing would operate in any other place?—Yes. Liverpool and Bristol are, I believe, the two latest places.

444. Is it common for people who come from London to try causes at Bristol?—It is very common. Issues out of the Court of Chancery are constantly tried there.

445. They do not find the distance to be travelled any great bar to such a proceeding?—I suppose not.

446. Do you refer to causes of action which arise in different parts of the country altogether, and not causes of action which have reference to Bristol or Somersetshire?—Yes.

447. What distance are you at Bristol from the Assize town in Somersetshire, take Taunton?—I think 44 miles.

448. And from Wells?—About 20 miles; but there is no railway yet to Wells.

449. In the spring of the year, can you state what number of Bristol causes are tried either at Gloucester or at Taunton?—I cannot. I have no means of ascertaining.

450. Where are the Bristol causes usually tried when there are no Assizes at Bristol?—I think in Somersetshire, generally. Of course there are causes tried in London very frequently.

451. But Taunton is your Assize town, I believe, for civil business?—Yes. That arises from Bristol being supposed to be attached to the Western Circuit, and, of course, solicitors are desirous of employing the counsel on the Western Circuit.

452. I find that, according to a statement handed in, at the last Summer Assizes there were only six causes entered at Bristol?—I was not aware of that. I know that there was a great falling off.

453. And in the year before there were 16?—Yes.

454. Are the citizens of Bristol summoned as jurymen either to Somersetshire or to Gloucester?—No, they are not.

455. They are exempt?—They are.

456. You mean that in criminal matters they are exempt?—Yes, and in other matters too. They are never summoned.

457.—Is there any other point to which you wish to draw the attention of the Commissioners?—Yes; there is a point to which I wish to advert, and it is not only to the inconvenience which attaches to prosecutors attending, but the almost injustice which is done to the prisoners. They are kept in Bristol until the Assizes are fixed, till the day of the Commission, and they are then removed from Bristol gaol to Gloucester gaol; and as they are generally, of course, poor men, it is a great hardship upon them to have to take up witnesses for their defence 36 miles, and with reference to witnesses to character it is almost an entire bar to them; you cannot get people to attend that distance; and independently of that, if a man is defended by counsel before the magistrates, the counsel who attend at Bristol are counsel from the Western Circuit; and there must be fresh counsel and fresh instructions given to counsel, because they are counsel from the Oxford Circuit who would defend him at Gloucester. I can mention one instance in which a woman was tried for forgery in 1846. She was asked by the Judge what she had to say. She said that she was 36 miles away from the town where she came from, and she had no witnesses; but a poor woman was heard to cry out in the court "I am here." She was called, and it appeared that she had walked the 36 miles to give most material evidence, and which had the effect of acquitting the prisoner. It caused great sensation at the time and the bar subscribed.

458. I am afraid if that is injustice at Bristol, it is one that is perpetrated in every town in England?—The Commissioners are probably aware that we did possess the privilege of gaol delivery before the passing of "The Municipal Corporation Act," and our Recorder was the Judge.

459. And I believe the Recorder had jurisdiction in capital cases?—Yes; the Recorder with the Mayor and Aldermen were the Court of Assize. Sir Charles Wetherell tried several capital cases. I should mention that the citizens feel it rather hard that, with a population of 137,000, they are compelled to take their prosecutors and witnesses to a small place like Gloucester, which has only 17,000.

460. I think Bristol is the only city that has the privilege of Nisi Prius Assizes?—I believe so; but that is only once in the summer. In actions for ejectment at Bristol, we can only try them once a year.

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461. Do you confine your application for a gaol delivery to the summer, when you have a Civil Assize?—The application of the Corporation will be, to have double Civil Assizes and double Criminal Assizes, and to make Bristol the end of the Western Circuit; that is our application.

462. You would not like to be attached to the end of the Oxford Circuit?—We should have no objection to that.

463. Only one Judge comes, I suppose, to try the civil business?—Only one.

464. Do you propose that two Judges should come and try both the civil and criminal business?—Yes.

465. I suppose if you got a half it would be better than nothing?—No doubt it would save us one half of the inconvenience.

466. Have you courts for more than one Judge?—There is only one court at present, but the Corporation would be prepared to provide the necessary courts, if there was any chance of having a Civil Assize.

467. The Recorder has a civil jurisdiction, I think?—There is the Solzey Court.

468. What is the extent of the jurisdiction?—It is unlimited; but there is one great objection to the Solzey Court which in heavy cases is a bar, and that is, that there is no power of giving a new trial at all. Both Sir Charles Wetherell and Mr. Justice Crowder, and the present Chief Justice Cockburn, have all held that there is no power of new trial, and, of course, nobody likes to risk the trying of a heavy case.

469. Have you not a Writ of Error from the Inferior Court to the Courts at Westminster Hall?—No.

(*Mr. Heaven.*)—I have been asked to present a memorial from the Law Association at Bristol. It refers to local actions of ejectment.

470. Can you state how many ejectments are brought in a year?—At the present moment there is a case in which a forfeiture was incurred, in the month of September last. An action of ejectment has been brought, and an application has been made to allow the solicitor upon the roll to remove it into the adjoining county. There are frequent cases of hardship in which landlords are not assisted in cases of forfeiture, and they must go to the Summer Assizes. The case I have referred to is one in which the rental is 300*l.* a year; the tenant is left in possession, and the landlord is without a remedy.

471. Why should it not be tried at Taunton?—It cannot be; it is a local action, and must be tried where it arises.

The deputation withdrew.

(A Deputation from Wakefield was called in.)

Mr. J. Whittam.

Mr. JAMES WHITTAM examined.

472. You are Town Clerk of Wakefield?—Yes. I have been requested by the deputation to state their views to the Commissioners. And before I go into the question about the removal of the Assizes, I may mention that we do not mean to say anything about the North and East Ridings, and these remarks will be confined to the West Riding. The subject naturally divides itself into two parts; and the first question is, whether it is desirable to have an additional Assize town at all for West Riding business instead of York? and the second question is, if the first be conceded, whether that additional Assize town ought to be Wakefield? With regard to the first question, this is not the first time that the subject has been discussed, for the Commissioners on Common Law, who reported in 1832, reported in this way: "The extent of the county of York is so "great, and both the population and business of the West Riding so disproportionate to "those of the North and East Ridings, that we think the appointment of an additional "Assize town, more convenient than the city of York to the inhabitants of the West "Riding, highly desirable. The place suggested for an additional Assize is Wakefield, "the advantages of which to the West Riding in preference to the city of York, and the "conveniences it possesses for holding Assizes are pointed out; and it appears to us to "be very conveniently adapted to the purposes of establishing an additional place for "holding Assizes in the County of York.—Signed by J. B. Bosanquet, H. J. Stephen, "E. H. Alderson, James Parke, John Patteson."

473. I believe at that time there were no railways established in Yorkshire?—There were not; but the disproportion which was noticed by the Commissioners then still exists, as the Commissioners are, no doubt, well aware. After the introduction of the bill by Lord Campbell, in 1855, for holding additional Assizes, I was instructed by the Wakefield Town Council to obtain some information respecting the proportion of business between the different Ridings. And I ascertained from the calendar that for nine gaol deliveries previously to July, or rather six gaol deliveries previously to July 1855, the disproportion was so great as to average at each goal delivery 60 prosecutions from the West Riding, and only 16 from the other Ridings combined. In July 1855 the discrepancy was still greater. There were 69 prosecutions from the West Riding, and only 11 from the other two Ridings. I find that last year out of 213 criminal cases, 165 came from the West Riding, and only 48 from the other two Ridings. As to the causes, I have examined the cause lists in 1855, for the two Assizes in that year, and there were

93 causes from the West Riding and only 28 from the other two. In the last year there were 77 from the West Riding and there were only 27 from the other two Ridings; so that the same disproportion exists as when the Commissioners made their report. Then with respect to jurymen, I find that out of 144 jurymen the proportions for gaol deliveries next preceding July 1855, are an average, at each delivery, of 95 from the West Riding, and only an average of 49 from the other two Ridings. That may arise from this circumstance, that in the West Riding there are a greater number of small freeholders than in the other two Ridings; and that proves the fact, that the West Riding furnishes the greater amount of business. I have also selected the places for nine gaol deliveries before July 1855, from which the prosecutions came, and I find that they came from 49 different places, and out of that number 43 were much nearer to Wakefield than to York, and the other 6 were nearer to York than to Wakefield. I have taken 89 of the principal towns and villages in the West Riding, and I find the population of those altogether is 959,272, and out of that population 924,063 were nearest to Wakefield, while only 35,209 were nearest to York. Then, with respect to railway communication, the electric telegraph has, no doubt, somewhat diminished, in some measure, the necessity for having an additional Assize town, but it has not done away with it; for, with regard to the electric telegraph, you may sometimes telegraph for a special witness or two, and they may come very shortly; but very frequently they are dispersed, and you cannot trust to get them so early as may be necessary, and sometimes you are obliged to keep them at York two or three days. Another evil is the distance; the railways charge according to the distance, and the expenses of prosecutions, as I am told, at York, are made up to the extent of nearly one-half by the expenses of witnesses.

474. Not by travelling expenses?—No; but by travelling expenses and time combined. I will take one murder case from Sheffield, in the winter gaol delivery of 1854, and I find that there were 17 witnesses, and that they were allowed each for travelling expenses 18*s.*, and if they had come to Wakefield the allowance would have been only one-half, and 8*l.* 10*s.* would have been saved in that prosecution in travelling expenses merely. Even with railway travelling, it often happens at York that murder cases are over late, and the witnesses cannot get home, and there are perhaps two days' extra time allowed; whereas if they had been at Wakefield one day would have been sufficient. In the murder case to which I have alluded, if witnesses had come from Sheffield to Wakefield, instead of to York, there would have been 6*l.* 7*s.* 6*d.* saved in time, making a total saving of 14*l.* 7*s.* 6*d.* in that prosecution.

475. So that by this arrangement you would benefit the Chancellor of the Exchequer?—Very much so. I also think that we should benefit the jury, medical men especially, and other witnesses. I find that a division of the business in the county of Lancaster has been attended with great benefit; and I have been told by good authority that the average cost of prosecutions in South Lancashire is 21*l.* less than the cost in Yorkshire.

476. That can hardly be; because the average cost of prosecutions in Yorkshire last year was 24*l.*, and the average in Lancashire about 19*l.*—Then my informant must have been wrong.

477. Your information probably referred to the year 1848, when what you have stated would have been correct.—Very probably that may be so. With regard to jurymen at York, if a juryman is carrying on business to any great extent, it is a great object to him to get home at night, and attend the Court in the morning; and he can get pretty well from York to such places as Wakefield and Leeds; but if he has to go beyond that distance, to Todmorden or Saddleworth, or Huddersfield, Halifax, or Sheffield, he cannot get home till very late at night, too late to attend to any business; and he must be up very early in the morning, to get to York in time for the opening of the Court. It would be a very great benefit to jurymen to be able to get home the same evening. I have also found, in obtaining information for the tables, that the 12 principal towns in the riding from which the business chiefly comes, such as Leeds, Bradford, Keighley, Skipton, Halifax, Huddersfield, Saddleworth, Sheffield, and Rotherham, are all of them much nearer to Wakefield than to York. Most of the business comes perhaps from Leeds, Bradford, Keighley, Halifax, Huddersfield, Sheffield, and Rotherham. And with regard to all those places, the distance between them and Wakefield, with the exception of Sheffield, stands in this way:—it is only one-third the distance to Wakefield, and it is two-thirds more to go to York. To Sheffield the distance is halved, and in that matter it would be a great boon to the West Riding to have an Assize town somewhere in the centre of the West Riding. And that brings me to the other question, namely, whether Wakefield is the fit and proper place.

478. Can you give the Commissioners any notion of the number of prisoners upon the average committed from Wakefield to York?—I am not prepared with that statement.

479. Or the number of causes?—The causes are very few, I am sorry to say, of late.

480. What is the population of Wakefield?—The borough of Wakefield contains 22,000 according to the last census; I should think now about 25,000; but we do not furnish many causes to the Assizes, and I am happy to say we do not furnish many prosecutions. But where they principally come from, all of them are places which are very much nearer Wakefield than York. The Quarter Sessions are held alternately at different places, and Wakefield is one of them. With respect to the advantage of Wakefield as being a central place, in addition to the recommendation of the Commissioners in 1832, I may state that

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in an Act of Parliament, passed in the reign of Queen Anne, for establishing a general registry for the West Riding of Yorkshire at Wakefield, it is especially stated that Wakefield is selected in consequence of its central position, being the town nearest the centre of the West Riding.

481–2. Possibly the relative importance of towns in the West Riding has somewhat altered since the reign of Queen Anne?—I do not think there has been much alteration, with this exception, that Bradford has sprung up since that time; but Halifax was a noted town at that time, and Leeds was a noted town at that time, and Sheffield. Since that period Wakefield has been also selected for various other public offices; it has recently been selected as the head quarters of the county constabulary, Wakefield having having been pitched upon because it is the central town of the riding. The office of the Clerk of the Peace is also at Wakefield, and Wakefield was selected on the ground of its central position as the situation for the county gaol.

483. The Riding gaol?—Yes. It is a very extensive gaol, and it would accommodate, as the governor tells me, 1,500 prisoners, and the week before last they had 1,251 in it. The Government lease 412 separate cells for convicts. The magistrates commit from the West Riding about nine cases out of ten which are sent to the Assizes to Wakefield, and those prisoners are taken to York to be tried, and if they are sentenced to imprisonment, I believe most of them serve out their time at York; but if they should be condemned to penal servitude, the Secretary of State then orders where they are to go, and the great majority come to Wakefield, on the ground of the distance being so short. But if they were tried on the spot, and sentenced, the expense would be saved of carrying them to York and bringing them back again. The prison has been recently very much enlarged. The old prison stands upon only about three acres; but the West Riding magistrates bought eleven additional acres of ground, and they have expended, I believe, nearly 150,000*l.* in the enlargement of the prison, and there is ample accommodation. If it should be required to have any further addition made to the prison it could be very easily done. The magistrates selected Wakefield for the prison in consequence of its central position. With respect to court-houses, there are at present two, which adjoin each other.

484. Have you any Borough Sessions?—No; we have no Borough Commission of the Peace. There are two court-houses, and either of those is larger than either the Nisi Prius or Crown Court at York, and the larger court is larger than either of the courts that will be in the Leeds new town-hall. In addition to that, the corporation of Wakefield possess that piece of land (*pointing to a map*) coloured pink; and they have obtained plans upon which to build a town-hall. They advertised for plans in 1854, and this is the ground plan of what they propose to do (*producing the same*). We should build the town-hall in such a way that it might be available for an additional Assize court to be connected with the existing courts by an internal communication, so that Wakefield then would have three courts, two of which would be much larger than the Leeds courts, and the third court would be larger than either of the existing courts at York. This plan was obtained in 1854, and the matter was in discussion in 1855, and the advertisements were prepared for contracts when the Bill of the Lord Chancellor was introduced as to the Spring Assizes, and the question then arose, whether Wakefield should not put forward its claim to be the town; but the completion of the work has been suspended.

485. Are the improvements to be carried out at all events, whether the Assizes are to be at Wakefield or not?—Yes. The plan of them would be contingent upon that circumstance, but not the carrying of it out. I think the estimates for the building are about 7,000*l.* I have no doubt that it would cost more when it came to be built. The dome would cost 2,000*l.* These offices (*pointing to the plan*) might be converted into a grand jury room and other requisite rooms.

486. How long have the present Corporation existed? I believe it is only a late charter?—The charter is dated the 15th of March 1848, nearly nine years.

487. Have you not applied for a Commission of the Peace?—We did apply when Sir George Grey was Secretary of State for the Home Department, some time ago, but it was opposed by some of the inhabitants of Wakefield. We did not know exactly upon what ground, but the Commission was withheld, and no application has been made since that time.

488. What is the object of that (*pointing to the plan*)? Is it merely for the meetings of the Town Council?—Yes; it was thought to renew the application for a Bench of Borough Justices, and to have this (*pointing to the plan*) for the Borough Court, and also for the meetings of the Council. There are committee rooms and other offices, an accountant's office, and an office for collectors and inspectors, and they would all have their offices under one building. There is another public building, called the Rolls Office. The manor of Wakefield is about 30 miles in length, and averages about 10 in breadth. Of course all the court rolls are kept at the Rolls Office, and the deputy registrar, or rather the keeper of the rolls, has frequently to take those documents to York, and of course they would be only required to be taken from their fire-proof receptacles up to the court-house if the Assizes were held at Wakefield, and there would be less danger, either of loss or of damage by fire.

489. The manor extends to the county of Lancaster, does it not?—Yes. It reaches to

Todmorden, and part of Todmorden is in the manor, and the other part is in Lancashire. Now, with regard to lodgings for the Judges, there is a building here (*pointing to the plan*) which is quite close to the court-house. It is surrounded by a shrubbery, and is now on sale, and has been offered for the sum of about 3,000*l.*, and that building is infinitely superior to the present lodgings for the Judges at York, both larger in extent, more pleasantly situate, more convenient, and better built. Again, with respect to the inns and the accommodation for the bar, our inns in Wakefield we consider to be much superior to those in Leeds. I have met with commercial men on the railway on Saturday who have come to Wakefield expressly to avoid staying at Leeds on the Sunday, the inns at Wakefield being much more comfortable and clean; and if the Assizes were removed I know many parties who would be ready to afford plenty of accommodation of that sort. The establishment of the constabulary at Wakefield is a matter of some little importance, because I understand that at York they are going to do away with the barracks of the military there; and, if there was any chance of an outbreak, the force there would not be at all equal to the force that could be concentrated at Wakefield at a very short notice. These premises (*pointing to the plan*) are very commodious. There is a very large yard, and a body of 400 or 500 constables might be kept in reserve in case of a tumult and not be seen by the people, and be ready to operate if necessary.

490. What is the whole number of constables in the West Riding of the new constabulary?—Between 400 and 500. The chief constable would have his reserve force here; but every Assizes there is no doubt that constables would be brought in as witnesses from all the various parts of the Riding, so that they might serve the double purpose of being witnesses and also of being present to act as constables if required. With respect to the elections, Wakefield has been pitched upon by the Government in introducing the Reform Bill as the proper place for holding the elections for Knights of the Shire, on account of its central position. They generally build the hustings adjoining the court-house, and they assemble on this vacant piece of land (*pointing to the plan*). Two or three elections ago there was a riot, and the military were sent for, but if the county constabulary had been then established, and there had been a force of 400 or 500 constables present, they might have been assembled without being seen, and they might have been called upon to act at once, and so prevented the riot in the outset. These are the principal advantages, I think, which Wakefield possesses as being the central town of the Riding. With respect to railway communication, I have a plan, copies of which I will hand in, with the permission of the Commissioners, showing the position of Wakefield. And there is a proposal to carry a line from Wakefield to Bradford and Leeds; it goes from Wakefield northwards, then it branches off to the right towards Leeds, and to the left towards Bradford. It is called the Bradford, Leeds, and Wakefield Railway, and it is proposed to be opened about June next. There is now a Bill in Parliament to make a railway from Doncaster in connection with the Great Northern, so that when those railways are completed the facility of railway communication to Wakefield cannot be surpassed, either to Leeds or to any other place in the Riding. The distance from Leeds to Wakefield by road is only about eight miles, and by the new railway it will be about nine.

491. Which way do you come from Doncaster to London?—On the Great Northern line from London you come as far as Knottingley, and on to the Lancashire and Yorkshire line. You then branch off at Knottingley to Leeds and Wakefield, but Wakefield is ten minutes nearer to London than Leeds is. The Great Northern trains from London separate at Knottingley, but the Wakefield train gets in ten minutes before the other. With respect to the population of the West Riding, I find that there is a greater proportion of the population nearer to Wakefield than there is to Leeds. I have made a calculation from the last census, and I find that there 739,167 of the population nearer to Wakefield than to Leeds, whilst there are only 586,328 nearer to Leeds than to Wakefield. If you go to Leeds and begin at the north-west, and go round by the north to the south-east, the population is very thin, but south and west of Wakefield it is very dense, and those are the localities which would be most benefited by the removal of the Assizes. With reference to Leeds, I may state that I obtained an extract from the Leeds Mercury, printed on the 12th of April 1834, in which the Leeds Mercury advocates very strongly the removal of the Assizes for the West Riding to Wakefield, and does not say a word about Leeds, and does not at all set up a claim, but seems to admit that Wakefield is the proper place. I quote that, and I ask what has been the alteration at Leeds since that time to make it more desirable to have the Assizes at Leeds than at Wakefield? I know of nothing but the new town-hall, and as soon as we have these buildings erected we shall have superior courts to what they will have at Leeds. We are superior in this respect: we have a Riding gaol, and that will be a considerable saving of expense, but they have no Riding gaol at Leeds. Again, we have all the public offices of the Riding here where the officials would have to attend with all the documents. The governor and the officers of the prison have now to go to York Assizes, and they would be all on the spot.

492. Are the serious cases committed to York Castle, or are they committed to Wakefield, and then sent over to York just before the Assizes?—I enquired of the governor of Wakefield gaol on Wednesday, and he stated that he did not make that distinction. He said that the magistrates had a discretion, and he understood them to

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be chiefly guided by the circumstance whether they were nearest to Wakefield or nearest to York, and he thought thai about nine cases out of ten were committed to Wakefield They are committed to the Assizes if they are committed to Wakefield. They are committed either to Wakefield or to York for trial at the Assizes. It is a recent power which has been given to the magistrates, and I believe that nine cases out of ten are committed to Wakefield on the ground of the nearness of Wakefield gaol, and the saving of expense.

493. But if they are removed from Wakefield to York afterwards that can hardly save expense?—I understood the governor of Wakefield gaol to say, that nine West Riding cases out of ten were sent to Wakefield first, and then taken from Wakefield to York to be tried.

494. Do you happen to know what the opinion of the magistrates of the West Riding generally is upon this point of the removal of the Assizes?—I have been with deputations from Wakefield to various places in the Riding, and they say generally this at Petty Sessions: "We do not think it belongs to us to give any opinion; it is now in the hands of "the Government, and it is a question for the Government; we have been used to go to "York, and personally we would rather go to York. If the Government determined to "have a division, and to have an additional Assize town, and asked us our opinion, we "should infinitely prefer Wakefield to Leeds." But the impression certainly of the magistrates is, that they have been so long accustomed to go to York, that they would rather go there still. That is the feeling of the old magistrates; but many I may state, are in favour of a removal to Wakefield. I think many of them thought it was no business of theirs, but thas it was the business of Government; and if it is to be divided they say, "We prefer Wakefiel to Leeds."

The deputation withdrew.

Monday, 18*th May* 1857.

THE RIGHT HON. LORD CAMPBELL IN THE CHAIR.

The Hon. Mr. Justice Coleridge.
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The Hon. Mr. Justice COLERIDGE examined.

495. Will you be good enough to give us your opinion upon the first question which we shall have to determine, namely, whether the Winter Circuit for the trial of prisoners may be entirely dispensed with? Dismissing everything else, do you think that for the public good two General Gaol Deliveries in the year without a Winter Circuit would be sufficient?—Certainly, that is my notion, if the times of the ordinary circuit were altered; with perhaps the exception (of that I am really hardly competent to speak) of Lancashire and Yorkshire.

496. In that case of having only two circuits you would alter the times of holding the Assizes?—Certainly.

497. In the manner that you have proposed?—In the manner that I have proposed, or in any other more convenient manner which equalized the intervals.

498. So as to make the division more equal?—Yes.

499. What is your opinion about the expediency of holding Assizes at other places than those at which the Assizes have hitherto been usually held in large counties?—It is very desirable to be done, if it can be accomplished without counterbalancing inconveniences.

500. Have you considered Yorkshire?—I have not considered it enough to give an opinion, but Yorkshire would of course be a county in which it should be done, if at all. What the selected places would be I do not know enough of local circumstances to state.

501. With regard to Warwickshire, it appears that all the opinions which have been given hitherto have been that it would not be expedient?—I quite agree in that. I see no ground for removal to Birmingham at all, Birmingham being so near, and Warwick so conveniently approached.

502. With regard to Lancashire; as you have gone the Northern Circuit, will you favour the Commission with your opinion, founded upon your experience? It has been strongly urged that there ought to be Assizes held, at all events, not only at Lancaster and at Liverpool, but likewise at Manchester?—I should say the same with regard to Lancashire as I have with regard to Yorkshire: I think it is desirable, looking at the great number of criminals who are tried at Liverpool now.

503. What would be your opinion with respect to the Welsh counties; would you be for grouping the counties and holding Assizes at one place for several counties?—I should think it the best thing to be done if the thing is possible.

504. Are you aware that that was thought of by the Commission of 1828, and that the Circuits were arranged by the then Mr. Justice Bosanquet, and that there was such an outcry on the part of the Welsh gentry that they were forced to abandon it?—I am aware of that fact, and that was in my mind when I said, if it were possible.

505. You have not a sufficient acquaintance, we suppose, with Yorkshire and Lancashire to know whether two Criminal Circuits a year would not be sufficient?—No,

I really have not. My impression is rather the other way, from the number of the prisoners and the weight of the crimes upon the Winter Circuit, both at Liverpool and at York, and also finding that you have still a very heavy Goal Delivery upon the Spring Circuit afterwards.

506. The Spring Circuit would be, no doubt, somewhat heavier. There would be the addition of just a month's more prisoners?—That is assuming a change of the time of the Spring Circuit; that might make a very great difference, I think.

507. It is proposed to hold the ordinary Assizes on the 10th of January, and at present the Winter Assizes are generally held as you know, about the 10th of December?—Yes.

508. The consequence is that there would be an additional month?—I do not think that that is worth very much consideration.

509. That could not be done without altering the Circuits?—No.

510. We understand you to give your opinion, that the Winter Circuit can only be dispensed with upon the supposition that the time of holding the Circuits shall be altered?—Precisely.

511. It is proposed by most of the Judges to make the Spring Circuit begin on the 10th of January. Generally the Winter Circuit begins the second or third week in December now; the consequence would be that barely a month's prisoners would be added to the Spring Assizes?—Yes.

512. That would only add two or three days to the Circuit?—Yes, or a little more.

513. In your opinion is two or three days to the Spring Circuit to be compared to the inconvenience of holding the Winter Circuit?—Certainly not.

514. Are you of opinion that twelve Judges would be competent to transact all the town business, supposing the Circuits could be altered so as to embrace six; or any other scheme might be adopted by which fourteen Judges or fifteen Judges would not be wanted for the Circuit? Are you of opinion that the town business could not be transacted in a satisfactory way?—I think before one answers that question, you must determine what you mean to be the ordinary number of Judges sitting in Banco.

515. That would of course necessitate the ordinary number of Judges sitting in Banco to be three?—Then, I must say, I think that that would be a very objectionable change. No doubt three, or even two Judges may dispose of a great deal of the business of the Court as well as four, and perhaps more rapidly; but I think that in all difficult cases it is better to have the mind of four than the mind of three, and according to my observation and experience, it is found that three Judges hardly decide with so much consideration, and they differ with greater readiness than four Judges do. This is not unnatural. The doubts or difference of one are adhered to with less misgiving as against the opposite judgment of two than of three minds; and there is, on the other hand, less chance of there existing a scruple in the minds of two than of three. Every judgment which is pronounced with a difference of opinion has not only less authority in itself, and gives less satisfaction, but is almost certain to lead to an appeal or a writ of error in the Court of Exchequer Chamber, which is a great evil; where you gain time in one step, you lose it in another.

516. Then, if the number of four Judges were continued as the normal number to sit in Banco, you think that the business in London could not be accomplished by twelve Judges?—I do not think it could satisfactorily. Besides, I quite agree with the letter which I have been reading of the late Mr. Baron Alderson, that people out of the profession have not ordinarily the least idea of what the Chamber work is; how very important it is, and how much of it there is, what it has grown to.

517. The fact is that a great deal of business is now transacted at Chambers which formerly used to occupy the full Court?—An immense deal; and there is this to be remembered, that if your ordinary number of Judges in Banco is three, you will be constantly sitting with only two; as we often now sit with three, the ordinary number being four.

518. You make no provision for the accidental absence or illness of one Judge?—No; but it happens not merely from these causes: it occurs many days in the course of every term, from one Judge being at Nisi Prius, and one going to Chambers, or attending the Court of Criminal Appeal, which usually sits for two days in the term.

519. You were talking of the increase of the Spring Circuit by about three days; does not the Winter Assize at York in general take two Judges about ten days, although some Judges have had the good fortune, we believe, to escape in a week?—I think it does.

520. Therefore, you must have three weeks for one Judge, to be divided between the two Circuits. The Winter Assize at York would occupy one Judge three weeks if it takes the two Judges ten days?—Yes.

521. Therefore that would add nine or ten days to each Circuit, supposing you succeeded in dividing the business equally between the Spring and the Summer Circuits, because the same quantity of business must be done at those two Circuits. Then do you think that you could, without altering the arrangements of the Northern Circuit, add the nine or ten days to the Spring Circuit at whatever time of year you held it?—I should rather correct myself. My impression is that you a little overstate it, when you state ten days. Beginning on Monday, which is a broken day, I have seldom gone beyond Monday afternoon of the following week. The Liverpool Gaol Delivery seldom takes so long as the York.

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522. Has not that rather altered of late years?—It used not to take so long. There is a considerable difference, and I think sufficient allowance is hardly made for the Spring Circuit beginning so much sooner.

523. You have the whole business of the year to be done, and therefore it must be divided between the two Circuits?—Yes.

524. We see that in your letter you propound a scheme, in which you suggest 65 days for the trial of Nisi Prius cases in London after term—the present time is 78 days—do you think that the business at Nisi Prius could be done during 65 days?—I think so in effect, because it is part of my scheme, that there should be a great deal more Nisi Prius business done in term. My scheme was to have each term of four weeks, and almost perpetual sittings at Nisi Prius during the whole of that time, so as to reduce the Middlesex sittings after term to a very small amount, almost to the Special Jury cases only.

525. Do you propose that the Judge should sit during term from ten o'clock till between four and five, as is done in the sittings after term?—Yes; that is my scheme, that the Nisi Prius business should be going on constantly in term time, two Judges sitting for the three Courts; and I think you will find in that way that upon the whole there are as many days allowed for Nisi Prius in London and Middlesex as there are at present. I beg leave to observe, with respect to the alteration of the times for holding the ordinary Circuits, that it will be important not to make the second Circuit later in the year than it is at present. I have always remarked that the common jurymen, who, by a strange and unjust practice, are almost exclusively drawn from the small farmers and small tradesmen, and yet get no payment at all for their attendance in a Criminal Court, find it extremely inconvenient to have the Assizes during the harvest; they complain very much now of being drawn away from the hay harvest, and to draw them away from the corn harvest also would a very great additional evil in the agricultural counties.

526. Will you have the goodness to state your opinion upon the expediency of a third Assize for Civil business?—My opinion is certainly that it is not at all necessary. I think that the greater number of causes are tried now quite as soon as they ought to be from the time of their commencement. I have been very lately sitting much at Chambers, and I do not think that gentlemen not in the profession are aware how very soon the smaller causes come to trial—within a month, or six weeks at the outside, from the time of the commencement the cause is very often over and there is execution for the debt. And in the heavier causes, I am sure that there is extreme difficulty for the parties to get their pleadings at all into shape within the time allowed by the rules. I suppose that not one cause in a hundred occurs without repeated applications to a Judge for more time. The number of Special Pleaders and Pleading Barristers who are in much of that kind of business is not very large, and having lately sat at Chambers a good deal, I should say that the Attornies really have great difficulty in getting their papers in time, either into or out of the hands of their Counsel or their Pleaders; and that very often amendments are necessitated and considerable expense incurred because the thing is done more rapidly, and therefore inconsiderately, than it ought to be done. Very often you cannot at once get the precise information you want; indeed, you hardly know at first what you will want; the first answer suggests a second question, especially when the cause turns on rights of way, rights of water, customs, or prescriptions, and matters of that kind; and thus in country causes two or three posts are lost out of eight or ten days, when nothing can be done. No careful Pleader, I suppose, likes in such matters to let his pleading finally pass from him to the other side until it has been submitted in a finished state to his client. As to mere money causes, it should be remembered also that a great number of them come to London without waiting for the country Assizes. Causes for debts come to London or Middlesex, where they are now tried at the sittings in and after term.

527. Which are tried in London at a smaller expense than they would be in the county town?—Yes.

528. Is there any other observation with which you would favour us?—I venture to make this remark with respect to the number of Judges and Circuits, and having perhaps less personal interest in it than any other Judge, I may make it with the less scruple. I think it is not at all desirable that more work should be put upon the Judges than they now have to do; this work being not merely that which the public see, but including a great deal of reading and writing of which the public know nothing but in its results. If you make it impossible for a Judge to go into society, or to cultivate liberal pursuits, you not only do him harm, but eventually you do very considerable harm to the profession; and whatever is in this sense injurious to the profession is equally so to the public. What I say about Judges, I say also with regard to Barristers. I think that they should have their times of relaxation. It would be a great pity to keep the one or the other in town when all other society is out of town, and it would be a great pity to oblige them to go out of town when all other society is in town. If you deprive them of the means of improvement which social intercourse out of their profession and literature afford, you do them great injury, the consequences of which must be felt by the public; for you cannot prevent theirs being a powerful agency on society.

529. Have you seen the letter of the late Mr. Baron Alderson to Mr. Gladstone?—I have been reading it since I came into the room.

530. Do you think that his scheme is a practicable measure, viz., to have three associated Judges with a vested right to be appointed?—I must say I think it is utterly impracticable. I do not think it would work well.

531. Coadjutor Judges?—Coadjutor Judges. Of course I do not mean to say that a Queen's Counsel or a Serjeant who is upon the Circuit does not try his prisoners as well as a Judge, but he is not often thought to do so by the parties most concerned and the uneducated standers-by; much, too, of that external circumstance which impresses them is lost, and it is not at all satisfactory, I think; and for a person to have acquired a vested interest in a judicial situation by an appointment of that kind, while he is still practising as a Barrister, would be full of evil.

532. Has the business to which the Judges have to attend in London much increased of late years?—No. Speaking for myself I should say, that my work is lighter now than it was for the first seven or eight years after I was appointed Judge. My case may be peculiar, for we had in our Court an immense arrear of business when I first came there.

533. Does the time occupied in Court and in Chambers combined amount to a larger extent of time than it did twelve or fourteen years ago?—I do not think it does; it is rather that the quality of the business has altered than the quantity. At that time we had a great deal of work at Chambers, which consumed time, and was wearying, but was almost ministerial, if I may say so, which other persons might have done quite as well as the Judges. Now we have, I think, a good deal of work at Chambers, some of which had much better be done in Court than at Chambers, where we have not the help of the Bar. It is something too, that we have no public with us at the time.

534. Are you of opinion that your business as a Puisne Judge has diminished of late years?—Yes; I think it has in this respect. We are very much relieved in the Court of Queen's Bench, from what we had for a great number of years, viz, long post-terminal Sittings.

535. In the event of a suggestion which is before this Commission being adopted, for diminishing the number of Circuits to six, do you think that the adoption of that plan would have much bearing upon the question, whether the number of Judges might be diminished, without throwing an undue amount of work upon them?—I still think that fifteen Judges are wanted for the London business, assuming that four are to sit in each Court. In short, to have my scheme perfect, there ought to be sixteen Judges, four sitting in Banc, in each Court, and four for Chambers and Nisi Prius.

536. Then we understand you to think that without considering the Circuits at all, there ought for the London business of all kinds to be fifteen Judges?—I think so.

537. That turns upon your opinion, that there ought always to be four in Banco?—To a great extent it does, and I think that should be the ordinary number. There is no evil in an occasional departure of one Judge; three go on for a time probably quite as well as the four, but if you have three as the ordinary number, beside the objection to the reduction in itself, it will be equally likely to be reduced very often to two.

538. By accident?—By accident and other things. For example, you could not have less in Term time than two Judges sitting, I think, at Chambers constantly. If two Judges did the whole work, you must have two sitting at Chambers constantly, and I think you ought to have two sitting at Nisi Prius constantly; and if you had only twelve Judges, that would leave you with but eight for the three Courts in Banc.

539.—Is the greater portion of time occupied in London in Banco, or in Sittings after Term?—It is about the same. There are in one case three times 24 working days and six days = 78, and in the other case there are about 19 multiplied by four = 76.

540. There are 85 in Term and 78 days in the Sittings after Term?—The 85 includes Sundays. The working days of Term in this year are, I believe, exactly 78. But this does not allow for the Sittings in the House of Lords or the Sittings in Error.

541. Will you favour us with your opinion as to the scheme of the Incorporated Law Society for three Circuits, both for civil and criminal business?—I have not heard what the particulars are.

542. Will you be good enough to look at this scheme. Supposing it were considered that three Circuits, for civil as well as for criminal business, were desirable, do you not consider that that is the best arrangement with respect to the times of holding them which has been suggested?—This seems to be as convenient a division for the profession as could be made.

543. You see no objection to it?—No.

544. That is supposing three Circuits are necessary?—Yes.

545. Has your attention been at all drawn to another proposal which we have had before this Commission; namely, a proposal to diminish the number of Terms to three instead of four?—No.

546. Have you ever considered the possibility of having only three Terms instead of four?—How is it to be as to time?

547. To begin the year with the Spring Circuit.—I mean, as to the quantity of time, are the three Terms to have as much time as the four at present?

548. Yes; adding a week to each.—I have not considered it at all, and have no opinion about it. I venture to say that I attach some importance to bringing all the Banc business, if possible, into Term. I think it would be done much more regularly, and I think with more despatch, if it was all done as part of the Term business, instead

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of there being sittings after Term in Error. I would lengthen each Term for the purpose of bringing into it the whole business. I think instead of our beginning as we now usually do, when sitting in Error, out of Term, somewhat later and rising somewhat earlier, this business would be transacted as a part of the regular business, and would be done more satisfactorily; besides which we should always secure the attendance of the Chief Justices and Chief Baron, to which, I confess, I attach very great importance. Whatever tends to increase the authority of decisions by the Court of Exchequer Chamber, tends to diminish Writs of Error to the House of Lords, and so diminishes delay and expense in litigation.

549. Then are we to understand that in your opinion three terms of greater length would in some respects be more convenient than four shorter terms?—I express no such opinion—my notion was to have four terms of greater length, not that there should be, in fact, more time expended in Banco Sittings, but that the present Banco Sittings should all be inTerm.

550. That all the Error business should be in Term?—That all the Error business should be in Term, and that the business of the Court of Criminal Appeal should be in Term—that every thing should be done in Term on which the Judges sit in Banco. In addition to the reasons for this already suggested, I should wish to add one of considerable importance—the convenience of the bar, whereby you advance the interests of their clients. *Important* business in Banco and at Nisi Prius ought not to be going on at the same time, especially in places so remote as Westminster and Guildhall, if you wish clients to be at all secure of the attendance of the counsel whom they have selected, and in whom they trust, and without whose help they do not believe that their cases have been satisfactorily heard. This rule would be much more nearly observed according to my suggestion, and counsel would have little excuse either for being absent or unprepared when their case came on.

His Lordship withdrew.

C. F. Robinson, Esq.

CHARLES FRANCIS ROBINSON, Esq., Master of the Crown Office, examined.

551. Will you be good enough to favour us with any information which you think may be useful to us in our inquiries?—I do not know that I can suggest anything. I have been desired to attend here to answer any questions which the Commissioners may be pleased to put.

552. The question has arisen, how the business of the Superior Courts of Westminster Hall was conducted, there being only twelve Judges; and it is now supposed that it is necessary that there should be fifteen Judges. Can you solve that difficulty?—I have known the Court ever since 1813, and I should say that the Judges sit as long now as they used to do then. There was a greater quantity of business then, numerically, but all the light cases have gone away, and many very heavy cases, particularly as respects the Crown side of the Court, have been introduced, matters which take a great deal of time. In those days the Court used to sit occasionally very late, but there were other days when it rose early. There was always Nisi Prius in Term two days in the week, and the Court was then always up at one o'clock.

553. Several days were occupied by persons being brought up from the Assizes to receive judgment,—such as smugglers from Cornwall?—Yes; that was equivalent to two days after each issuable Term.

554. Then, before the establishment of the Bail Court you had two or three days in Court occupied in Justifying Bail?—Yes; the Judges used to wait in their Chamber till the Bail business was finished, and that sometimes, as on what was called the Great Bail Day, did not finish before two or three o'clock.

555. And sometimes not at all?—That has happened, I believe, I think, with respect to even the number of cases in the Crown Paper, there were as nearly as can be the same number heard in the five years preceding 1830, and in the five years last past; and they are certainly now much heavier cases, because those cases which come under Mr. Baines' Act, cases as to the Rating of Literary Institutions, Allowance of Accounts by Poor Law Auditors, Railway Rating Cases, and matters of that sort, of which there are many, are much heavier than the Common Settlement Cases used to be, which formed at that time the great bulk of the Paper.

556. Taking the combined business of the Judges in Chambers and in the Courts, do you consider that it is greater now than it was previously to the time of there being fifteen Judges?—I should think, in the Court with which I am connected, it is, as respects the quantity of time consumed, because all the matters of course have have gone away—every thing which comes now before the Court (and I believe I may say before the Judges in Chambers) is matter which requires a great deal of consideration. There were very many matters of course before which required very little time, and which were transacted, I believe, by the Judge's clerk in Chambers.

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557. Do you think that the serious business coming before the Judges both in Court and in Chambers has materially increased since the time when the Judges were only twelve in number?—Certainly I do.

558. What is the class of business which you think has added most to their labours?—In that department of the Court with which I am most familiar, it is principally the opportunity parties have of sending special cases to get the opinion of the Court upon, without being at the expense of going to Sessions and having a trial before getting that opinion. It is a great saving of expense to the parties; they come at once under Mr. Baines' Act, put their case in the paper for argument, and get the opinion of a Court of Law without any previous expense at all. Those are always very heavy cases.

559. Do you find that by having four Judges sitting continuously through the Term, and being relieved from the common business of justifying bail and bringing up people for judgment for smuggling, and questions of that sort, any great difference has taken place with reference to the delay in getting a cause heard?—The paper used to be blocked up in former times. New trials used sometimes to be two or three years before they were heard. In Lord Ellenborough's time I recollect perfectly well that the Motions for new Trials after the Circuits, on some occasions, took six or seven days, the last two or three exclusively of all other business. The list which was made out then used to extend over three sides of a sheet of foolscap paper. I remember Sir James Scarlett moving nine new trials consecutively after the first four days of Term, that of course took a great deal of time.

560. When those new trials got into the Paper did they sometimes wait for two or three years more before they were heard?—Yes.

561. So with the Special Paper?—Certainly.

562. And so with the Crown Paper?—A long time.

563. Your opinion is that as regards the London business, it would not be advisable to reduce the number of judges?—I should think not; it is quite enough for the full number of Judges now as it was when they were created.

564. You think that the fifteen Judges have now as much business to transact individually as the twelve Judges had previously?—I think that they have as much business in Term, and it appears that they have pretty well as much business on the Circuits—though there are certainly fewer civil cases.

565. Are not the number of motions for criminal informations very much diminished?—Yes; there are hardly any now, and the *quo warranto* business is entirely gone. That used to form a large proportion of the business on the Crown side of the Court of Queen's Bench. We have not had any informations against justices of the peace, or any thing of that sort for a very long time. It is almost entirely against newspapers that such motions are now made, which generally go in a very small compass.

566. In the Crown business has there not been a diminution?—A large diminution *numerically*, but more heavy cases; for instance, in Writs of Mandamus, which are only quasi Crown cases at last—such as compensations under Railway Acts—they pass through the Crown side of the court, but are really civil cases; they have increased very much, and are all weighty matters.

567. Upon the whole, would you say that there has been a diminution or not of the Crown business of the Court?—A diminution numerically, but not in the weight of causes.

568. Not in the length of time fairly required for disposing of them?—I should think not.

569. A great many questions now arise upon the construction of Acts of Parliament, which come forward, I suppose, in the shape of a Mandamus?—Yes, a great many. The Health of Towns Act, and almost all Public Acts of that description, now afford matter which comes before the Court of Queen's Bench in some way or other.

570. There was a vast amount of litigation at one time upon the Municipal Corporation Act alone, was there not?—Yes; for the first two or three years after the Act passed, till a subsequent Act passed, which prevented those light objections from being taken. The Sessions cases, Settlement cases, and cases of that sort, have of course disappeared almost entirely?—Upon the whole, the weight of business, and the time which it takes, are about the same, I think so indeed.

The witness withdrew.

J. H. Cancellor, Esq.

JOHN HENRY CANCELLOR, Esq., One of the Masters of the Court of Common Pleas, examined.

571. Will you favour us with any information which you think may be useful to us in this inquiry?—I am prepared to answer any question. I have not any statement to make in particular.

572. We are considering as to the new modelling of the Terms and Circuits.—The knowledge that I can speak of is of the state of the business of the Court of Common Pleas for the four years preceding 1830. I was appointed and took my seat in Court upon the first day of Hilary Term, 1826, and I can give a general outline of how the Court was employed during those four years. There is a little difficulty about it, for this reason, that

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I am the only surviving officer of the Court. The Chief Secondary, who held the office at the time, has been dead some years; therefore I have been obliged to glean the information, as best I could, from old books and memoranda: they are not in a very perfect state, I am sorry to say. I can speak of my own personal knowledge, first of all, as to the number of days for which the Court was occupied. In Hilary Term, 1826, the Court sat eighteen days.

573. They sat, we suppose, every day in Term; but can you tell the number of hours which they sat each day?—They sat from, perhaps, half-past ten to three, or half-past three or four, except towards the latter end of the Term, when they sat much later. I have known them sit till eight, nine, or ten o'clock at night, because there was a press of business, which was left till the end of the Term, and it kept the Court sitting very late. At that time, twice a week, probably on the Wednesday and Friday, or the Tuesday and Thursday, the Court sat at Nisi Prius at Westminster and in the City, at Guildhall; then the Court rose earlier.

574. Breaking up in Banco?—Breaking up in Banco. They never sat on those days, as they do now, after the Chief Justice went to sit at Nisi Prius. The 2nd of February was a day *dies non*, and in Easter Term Ascension Day was another *dies non*. With that exception they sat every day, and I should say the average sitting was from half-past ten to three or four. Sometimes they adjourned when the Judge went to Chambers, but they never sat on the Nisi Prius days after the Chief Justice left.

575. We are rather desirous to have a comparison of the quantity of business in those days with the present?—I can tell you the number of new trials moved for. In the first Term there were but seven; Hilary Term is not a busy Term. The chief Terms would be Easter and Michaelmas Terms, after the Circuits. In the Easter Term of the year 1826 there were fourteen new trials moved for. In the Trinity Term, nine, and in Michaelmas Term, twenty-three. Then those cases were hardly ever heard in the Term; they almost always went over to the next Term, and they formed a paper of business for the Term. Then there was the Special Paper business, which was not certainly so heavy as it is at the present day.

576. Has the business increased in the Court of Common Pleas in the last ten years compared with the year 1830?—I think so, certainly. In the year 1827 there was a great difference. In Hilary term there were 16 new trials; in Easter term, 39; in Trinity term, 8; and in Michaelmas term, 47. That is the longest year I ever knew. Then in the year 1828 it fell back again. There were, in the respective terms, 15, 18, 5, and 28.

577. When was Lord Chief Justice Tindal appointed?—In Trinity term, 1829. Then in 1829 there were 15, 20, 7, and 38. Lord Chief Justice Tindal was Chief Justice at that time. At that time there were a great many motions made in Court, some of which are not made at all now, and a great deal is done by summons. Then, in addition to that, there is a great deal now before the Court which never existed in those days, because there are the railway matters. There are the matters relating to Joint Stock Companies. There are the registration appeals from the revising Barristers. There are the appeals from the Judges of the County Courts; all those are matters which take up a great deal of time. Then there is one suggestion which I will make, namely, that in those days the Court was a close Court; none but Serjeants could practise in it. The consequence of that was that there was rarely or never an instance where two Serjeants were on the same side; therefore one Serjeant was heard on one side, and one on the other. Now we have perhaps three Counsel on each side, and the Court are bound to hear them all; that all takes up an immense deal of time, because although the Junior in those days was present, and had his Brief, he was not supposed to be there, although he might prompt. The Attornies were obliged to instruct the juniors; it was the etiquette to do so. Therefore, of course, one Serjeant was heard on one side, and one upon the other, and then the Serjeant replied; and it, perhaps, did not take half the time that half a dozen Counsel occupy now-a-days. It takes up the time immensely, and it makes a wonderful difference in the state of the business of the Court.

578. That applies to the new trial cases; not of course to the Special Paper, where only one Counsel is heard on a side?—Just so. It applies to new trials and all those heavy rules which are made, in which there are two or three Counsel on a side. In the injunctions against railway companies we have had several instances of there being two or three Counsel on each side, and very lengthy arguments they have made.

579. Does it appear to you that there is now as much occupation for the Judges of the Court of Common Pleas as when you first became an officer of that court?—Decidedly.

580. Do you think that there is more?—I think there is more; the nature of it is so much altered; it is so different.

581. Do you think that the fifteen Judges have as much to do now as the twelve Judges had before the Act was passed?—I do, indeed.

582. That is to say, that there is as much for each Judge of the fifteen as there was for each of the twelve?—I should say so. Their duties at Chambers are extremely heavy. The duties of the Judges at Chambers are very important; they have very hard work there.

583. Can you point out to the Commission any mode by which the business on each Judge might be alleviated?—I cannot do that. In court it is done in a sort of corporate capacity: they are in a body working togther; it is not individual work there. The

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individual duties are upon the Judge at Chambers and on the Circuit, and other duties. The Courts are constantly sitting now at Nisi Prius, which they never used to do. There never was an instance in those days of the Court sitting more than once a week at Westminster and once in the City. Now they sit *de die in diem.*

584. Are there any Remanets from the Sittings?—No; they generally get through the business.

585. In former days were there Remanets?—A great many; because, at one Sitting, if they did not get through the Paper, the cases were adjourned for a fortnight, till after Term, or till the next Term, because it was not the common practice for them to go from one Term to the Sittings after Term, but till the following Term.

586. We understand you to express an opinion that the London business requires the present number of Judges?—I think so.

587. You do not think that a diminution of the number of Circuits by one, so as to make six circuits, and therefore requiring only twelve judges at once on circuit, would enable us to dispense with the extra three Judges?—I should hardly say it would.

588. The London business requires the present number?—I think so; the causes are very heavy.

589. Is it constantly the practice now for two judges to sit out of Term at Nisi Prius, or does it occur very frequently?—I am not quite sure about that.

Mr. Justice Cresswell.—In the late Chief Justice's time, I do not think it was ever done for more than about a day or two. Since the present Chief Justice was appointed at the end of Michaelmas Term, he called upon me (it was my turn to take such duty, if required) to help him in the City. He had some very heavy Special Jury cases, cases occupying two days each, and I tried nearly all the Common Jury cases in the city after Michaelmas Term. After Hilary Term he also had assistance in trying the Common Jury cases. The Special Jury cases, which had been tried in the Court of Common Pleas of late, have been of the heaviest character. You very seldom get through above one in a day, sometimes it takes two days.

Mr. Baron Martin.—In the Court of Exchequer, ever since we had the power to sit, we have, I believe, never left any Remanet at all. The Chief Baron made it a point to have all the causes, if possible, tried. That has been carried out, and I do not believe that upon any occasion, ever since the power was given of sitting with two Judges, there have been any Remanets left in the Court of Exchequer. To accomplish that we have found it necessary to have frequent recourse to a second Court. This last week we had six days of sittings, which required a second Court three days; we had two Courts sitting in the City two days, and also two Courts sitting in Middlesex one day. I cannot say much about Michaelmas Term or Hilary Term, because I left town early to go the Northern Circuit; but there were no Remanets left. After Michaelmas Term I think there were two Courts sitting for a fortnight. But the result has been that we have in no instances left any Remanets; and it is a matter of extreme importance. I have no doubt myself, from what Mr. Watson has told me, that a cause being postponed over a day creates on an average 10*l.* additional expense, and it is a matter of very serious consequence to the parties to have their causes tried even on the day when they are in the Paper; and of course it is of much greater importance not to have them postponed till a future time, when the whole thing has to be done over again. My own view of the matter is that it is the necessity of getting through the business without leaving arrears, which makes the real necessity for the fifteen Judges. If the business was done as it formerly was done, there would not be the same necessity. Lord Campbell must recollect when there were in the Court of Queen's Bench hundreds of remanets.

590. (*To. Mr. Cancellor.*)—Are you in a position to give to the Commission any comparison between the amount of London business now and the amount of London business at the time when there were only twelve Judges?—I cannot say that I have the means of stating the number of causes, because that does not come under my department at all; that is, with the associate, but you have returns which will show that I think.

591. There are a great number of motions, of course, which used to be made in open Court, which are now abolished by the Common Law Procedure Act?—Yes, a motion for a rule to compute was always made in Court, and also to make it absolute. It was the same with rules to plead several matters.

592. The number of those motions in former days was very large, was it not?—Yes; and they are all now abolished. It has quite changed the character of the business.

The witness withdrew.

(A Deputation from the Incorporated Law Society examined.)

G. Lavie, Esq.
W. Murray, Esq.

GERMAIN LAVIE, Esq., and WILLIAM MURRAY, Esq.

593. Will you favour the Commissioners with any information which you think may be of service to them in their inquiries?

(*Mr. Lavie.*)—The sentiments of the Council of the Law Society are that the number of the Judges ought not to be reduced; and the sentiments of all the members of the profession, the Attornies, that I have spoken to, without exception, are that it ought not to be reduced. Every one expresses rather his wonder that there should

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be any thought of reduction. Some say that they should have thought that the number might be increased instead of being reduced. I think there is but one feeling on the subject among the body of Attornies in London.

594. Is that opinion founded mainly upon the London business to be transacted by the Judges, or upon the Circuit business to be transacted?—I think it is compounded of both. We have not quite the same means of judging of the Circuit business that we have of the London business.

595. Then it is chiefly founded upon the London business?—It is mainly founded upon the London business.

596. Irrespectively of the Circuits, is it the opinion of the gentlemen of the profession, to whom you refer, that for the London business the number of the Judges could not be properly reduced?—Yes, that is the opinion. One element of that opinion is, that I find that there is a universal opinion against three Judges sitting in Banco. I own that I have myself the strongest private opinion against three Judges. And I think that if you reduced the number to two Judges, or even one, it would be less objectionable. But you must recollect that the Judges of the Courts of Common Law are always more or less sitting in appeal upon matters of fact tried at Nisi Prius; and, therefore, I think there ought to be four, and that two Judges would not do. I think three is the worse number of all. I think three will never give satisfaction to the suitors, because if there is a majority of two to one, it does not give satisfaction. Of course three to one does not quite give satisfaction to the losing party, but there seems a decided preponderance. There are other reasons. We fancy, with great respect to the Judges, that if two Judges are very predominant in a Court, and they take the lead against the one Judge, the one Judge may as well not be there. With three Judges to one, it is more difficult not to preserve something like an equipoise; and though it occasionally happens that two Judges may be ranked against two Judges, that is not common; and when it does happen, it is upon a very grave and difficult subject. We fancy that by its being always necessary to have a majority of three Judges, there is a better chance of things being well considered; and we think that the public would be better satisfied than with a majority of two to one.

597. Practically no decision can be come to without a majority of three to one?—Just so; and we think it much better than a majority of two to one. We are very much accustomed to Judges sitting in Equity alone. There the Judge has the whole responsibility himself; he has to argue the case with himself; it is all in his own mind, in his own breast and conscience, and he must come to a proper conclusion; and I think we are tolerably well satisfied with that. And if the business of the Courts of Common Law were determined in the same way with one Judge, I think all the profession would be better satisfied than with three Judges.

598. They think that one would be better than three?—Yes; but I think that a plurality is indispensable in the Common Law Courts, though not in Equity.

599. You might have single-seated justice; but if you are to have a plurality of Judges, you would have four?—Yes; I would have a decided majority if there is to be a plurality of voices and opinions. Then, I may observe, that the business is altered a good deal; but the business is really substantially now very great in London. I am not in the habit of going much now to Chambers; but I have two Common Law clerks, who are constantly in attendance at Chambers; and they come to me repeatedly with complaints of the impossibility of getting through the business. During the time that the Circuits are going on, when only one Judge is sitting for all the three Courts, we find very great difficulty very often in getting through the business.

600. Do you consider that the Vice Chancellor is a better tribunal than the Lord Chancellor and the Lords Justices?—I will not discuss that question. I think that a single Judge for the Court of Chancery is better; but I think it is absolutely necessary to have more than a single Judge in the Common Law Courts; they are constituted upon a different principle, because they have brought before them matters of fact, which they have to review. And I think that very often it would be very inconvenient that a Judge sitting at Nisi Prius should be afterwards the same Judge upon appeal. I think, on the whole, we all agree that there should be still the four Judges in the Common Law Courts.

(*Mr. Murray.*)—Yes, and the number not less than fifteen.

601. Do you consider three Law Lords a better number in the House of Lords, or that one would be the best there?——

602. Do you really seriously mean to say that you think that one Judge is better than three in any Court?—Yes, I think, I will say positively, that in my opinion, one Judge is better than three in any Court under any circumstances.

603. And you think that one would give more satisfaction to the public?—Not when you alter the constituted tribunal, which has been four. I think if we were to reduce our Common Law Courts to one Judge now, it would not be so satisfactory, because people have been accustomed to four.

604. Have you anything further to add?—I believe that at the Law Society we all thought that there might be some improvement with regard to the Circuits. I do not think we all of us see our way upon that subject, though we have sent in a Report from the Law Society.

605. You have sent in a scheme?—Yes.

(*Mr. Murray.*)—But in reference to any alteration, a good deal will depend upon locality and the situation of the Assize towns, and the facilities for travelling to them.

(*Mr. Lavie.*)—There are certain places with respect to which I have frequently heard complaints, particularly Hull. At Hull they complain very much that they have not a Circuit of their own. It is no great distance from Hull to York, but still they complain of it, and there are other places.

606. Have you had many complaints from Hull of that description?—I cannot say many, I have heard it three or four times as matter of complaint.

607. Have you any knowledge of the number of causes upon the average which have gone from Hull to York?—No, I cannot speak with any certainty upon that point.

608. Are you of the same opinion with one or two other gentlemen who have been here, that the business transacted now by the Judges in London, confining your attention to the London business, is individually amongst the fifteen Judges, greater than it was when there were only twelve Judges, or as great?—I should say that individually it is greater in some respects. My first recollection of the individual Judges of the Court of Exchequer was that, except when the Chief Baron or other Judges sat in equity, they had very little to do. The Court of Exchequer was a closed Court for all Nisi Prius business. I recollect in my day, the first civil cause which was ever tried in the Court of Exchequer. The Court of Exchequer never used to sit for general business. The Judges then, I suppose, had a very easy time of it. I should fancy that now the Judges have individually as much to do as any men reasonably ought to do, some more and some less. I should think that the public would not be benefited by their being more worked than they are. The business which is done at Chambers now is very great, and it is very different from what it used to be. I recollect the time when there was nothing but what they called the General Issue. There were no pleadings, no questions arising; there were no interrogations in our Common Law Courts, and the state of business altogether was very different, and at the very time when the fifteen Judges were chosen, I should say the business was less than it is now in the aggregate.

609. Were you conversant with the business in London at the time when there were only twelve Judges?—Yes, for some years. I went into the city first in 1824.

610. Can you give us, so far as your experience and opinion go, any comparison of the general amount of business transacted now by the Judges, as compared with the amount of business transacted at that period?—To give it in detail would be very difficult, but I should say, in round numbers, that the aggregate of the business is as great now as the aggregate of the business was before.

611. You think that the aggregate of the business now is as great as it was when there were twelve Judges?—As to many of the Judges, I think it is greater.

612. You think that the aggregate of the business now is more than that which was found too much for twelve Judges before?—I think so, indeed.

613. Can you point out the chief features of the change which has taken place?—A great deal arises from the chamber business being so very much increased—a great deal from the interlocutory business which there is now, did not exist before. A great improvement has been made of late years, no doubt, and causes have come to a more satisfactory result. I recollect when a cause was two years in Lord Tenterden's paper; when I first went into the city an action was brought, and there was no pleading required, merely the general issue, and the parties came to issue, and the cause was set down. In my office we never used to look at those papers for a year, we never thought it necessary at all to look at them till we knew when the cause was likely to be tried. There was a complete monopoly in the Court of Queen's Bench. There was very little done comparatively, in the Court of Common Pleas, and nothing at all in the Court of Exchequer. The whole of the business was then in the Court of Queen's Bench, and it was two years before causes were tried. I should almost have said that it was not the Welch Circuits alone that led to the appointment of fifteen Judges, but, it was rather the notion, perhaps, of strengthening the Court of Queen's Bench, because immediately after that alteration was made, a second Judge was always sitting in the Court of Queen's Bench, which, in my early days, was never thought of. The Bail Court, when I first began, was never thought of; all the Bail business and so on used to go then before the Court, which occupied a great deal of time, and comparatively very little business was done. I should say that the aggregate of business actually done by the Judges is now very much greater, that is to say, the substantial good business which they do, the time occupied may not be greater. The Judges now are occupied in impotant matters. The labours at Chambers are very great, and there is a great deal to do, involving a great many important questions, and very often there is not time enough to do it.

614. What in your opinion has been the tendency of the various changes in the Law of late years, such as the establishment of County Courts, &c., with regard to the business of the Judges in London, in the course, say, of the last ten years—do you think that the business has been gradually increasing or falling off?—The business of the County Courts has taken away some of the small business, no doubt.

615. What has been the general tendency of the last ten years; has it been to an increase or a diminution of the business transacted by the Judges in London? What at this moment is the gradual tendency, is business increasing or diminishing?—Without having gone through the matter statistically at all, my impression is that the business has not diminished, although, the County Courts have been established.

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616. Do you think that a diminution in the number of Circuits from seven to six would have any material bearing upon the necessity of keeping up the present number of Judges?—The only benefit of that would be that there would be three Judges in London doing nothing, who might be attending at Chambers. I do not think that that would be a sufficient reason for reducing the number of Judges to thirteen.

617. Are you of opinion that the fifteen Judges now do get through the business satisfactorily to the public?—It would be much more satisfactory to the Attornies as a body, if during certain periods of time, namely, when the Assizes are sitting, there were two Judges attending to Chamber business instead of one; I have no doubt there is business enough for two Judges. There is a great deal of interlocutory pleading and discussion before the Judge on very important matters pending at the Assizes. Letters come up from the Assizes, and it has to be got through before post time, and it is very difficult to do it.

618. At any rate, your opinion is that the present fifteen Judges are worked as hard as eminent public officers ought to be, that their time is fairly full?—Yes, and that I understand is the opinion of all the Attornies.

619. We understand you to say that the business now is of about the same amount, but is of a more important character than it was formerly?—Yes.

620. And brought to a more speedy issue?—To a much more speedy issue, undoubtedly; and it is much more satisfactory.

621. It is very rare now that a case is not tried upon the merits?—Yes.

622. And that was not the case some time ago?—The misfortune in former days was that cases were prolonged by all sorts of things, which are done away with now. And what gives a great deal of occupation, I fancy, to the Judges, is interrogating the parties and getting documents at an early period, which necessarily occupies the Judges a good deal more or less. That has been a most valuable thing in expediting justice, and people now come to an understanding about the cause at an early period. In former days, according to my recollection, in 1824, and some years afterwards, people made up their minds that there was a law suit, and they made up their minds not to attend to it until the time was coming near when it was necessary for them to attend to it; there was about a year which was almost totally lost sight of.

623. And at the trial itself, it must be in your recollection that in many instances nonsuits occurred, and the thing went off merely upon a little variance between the proof and the evidence—that does not exist now?—We were then upon the system of tripping up more than we are now; we tripped up upon the question of stamps and things which were quite unexpected.

624. We have a plan before us, recommended by the Incorporated Law Society, with regard to Terms and Circuits; were you a party to the arrangement of that plan?—I was not.

625. Are you conversant with the recommendations in that plan?—Yes.

626. We see that that plan recommends three Circuits in the year. Is it your intention, in recommending three Circuits in the year, that they should each of them transact civil business?—Certainly.

627. Is it your intention that they should each of them be Courts of Gaol Delivery, so as to take all the criminal business awaiting trial?—That was necessarily incident—it was was not discussed,

(*Mr. Murray.*)—We were not decided upon three Circuits for civil business going into every county.

(*Mr. Lavie.*)—Nor every place.

(*Mr. Murray.*)—For instance, in Cornwall it seemed to me to be out of the question.

628. Will you be good enough to explain what the views of the Incorporated Law Society are with regard to the arrangement of criminal business by these three Circuits?—It was contemplated that there were to be three Circuits for criminal business, and that criminal business should be transacted as at present. We also thought that civil business might be transacted on almost all the circuits. But at some particular places it did not seem to me and to the other gentlemen that there were causes sufficient to incur the expense of it. Barristers would not attend.

629. You say that the criminal business should be transacted as at present. I mean as at present upon the two Circuits.

630. You are aware that at present two of the Circuits are Courts of Gaol Delivery, and the third Circuit is not?—I am quite aware of that.

631. Would you persevere in that arrangement, so as to make the third Circuit not a Court of Gaol Delivery?—No; we meant that it should be a Court of Gaol Delivery, there is a Gaol Delivery now at Christmas under certain circumstances.

632. At the Winter Assize, which you are of course aware, in the first place, has only been sent to certain parts of the country; they have only tried Assize cases; they have never taken those cases which are cognizable by Courts of Quarter Sessions; therefore it is not a Court of Gaol Delivery?—I did not understand that. I consider it as a General Gaol Delivery.

633. (*To Mr. Lavie.*) We see that your proposed arrangement of the Circuits is such, that between the first and second there would be an interval of two months; between the second and third there would be an interval also of two months, and between the third and the first again there would be an interval of four months. Do you think it desirable

either for Civil or for Criminal business to be holding an Assize so often as once in two months?—I was asked the question whether I was a party to this arrangement, and I am bound to say I was not. I have heard it discussed since. I may say that there is not quite unanimity of opinion amongst the Council of the Law Society upon it.

634. Taking your own opinion, is it at all desirable for the ends of justice, either civil or criminal, that there should be a Court of Assize in the country districts of England every two months?—I hear from people in the country, I hear from Liverpool people, that business which would be conducted at the Assizes by the Superior Courts is either sent up to London to be tried, or to some other place where it can be tried. London and Westminster are the places where it can be alone tried during the intervals of time when they have not sufficient opportunity of trying causes at the Assizes, or the alternative is, if the case admits of it, to go to the County Court. I believe myself that the effect of there being three Assizes at those large places would be, that there would be a greater employment of the Superior Courts, because they are preferred by such places as Liverpool and Manchester. The County Courts there are not preferred in the abstract to the Superior Courts.

635. We believe that you know more of the Civil business in London than any man in London, but we doubt whether you have any peculiar means of being acquainted with the administration of the Criminal Law in the country?—The Criminal Law I know nothing about, and what I say about Liverpool is more from what I hear people say than from what I know myself.

636. You can speak, we suppose, of the Civil business at Liverpool. You have probably some agency?—No, I have no agency at all.

637. However you have heard complaints?—I have heard complaints made. I may further remark that all the Lawyers, I think, are anxious that there should not be too much of an inroad upon the long vacation. They think it is neither beneficial for the Attorney nor for the Barrister that there should not be a long vacation ample for every purpose.

638. As regards the recommendation of the majority of the Law Society, they are for three Circuits?—I think they are.

639. (*To Mr. Murray.*)—Did you vote on that side?—Yes.

640. Perhaps you will state the view which is taken?—I take my views a good deal from the Country Law Societies, the Reports which they sent us, and their recommendations, and judging from my own experience, I should say, that if carried out, it would be very desirable.

641. Are the Country Law Societies unanimous?—All whose opinions we have seen.

642. On what point?—That there should be three Circuits.

643. For Civil business?—For Civil business. I take the Devon and Exeter, the Plymouth, Manchester, Lancaster, Preston, Hull, and Newcastle-upon-Tyne Societies. We communicated with them, in order to get their views.

644. Those Societies are all for the three Circuits?—I think so.

Mr. Lavie.—Not all, but most of them are.

Mr. Murray.—All except the Manchester Society, who think that the Assizes for the Hundred of Salford should be held at Manchester. The Plymouth Society recommend that the Assize should be held at Plymouth, three Circuits, and so on.

645. Have the Law Society taken into consideration the question of a fresh division of Circuits?—No, not quite. I tried my hand at it one day, to see if I could make anything of it, but without details, and without some further information, it is utterly out of the question.

Mr. Lavie.—It is a very difficult subject. I should think that the Judges are almost the best parties to speak upon that point.

646. Do you see a benefit in having three Terms rather than four?—One's first impression is that there is no benefit in it, but when one looks at it, I do not think it is very material. If there had been three Terms originally, I do not think I would have altered them to four.

647. But in the event of having three Circuits, does not it become very material to re-arrange the Terms accordingly?—It must be done.

Mr. Murray.—It seemed to us that Easter and Trinity Terms coming together was undesirable.

648. What would be the effect upon the interests of the Bar, if the Circuits were to be redivided, and the old Circuits to be cut up?

Mr. Lavie.—That would depend upon what you made it. If you cut off a great deal of the Northern Circuit, it would affect the interests of the members of the Northern Circuit of course.

649. Would it be necessary to keep the same rules with regard to the attendance on Circuits?—I should think it would. I do not quite understand what it meant by "rules."

650. On the Northern Circuit every Barrister we presume is confined to that Circuit; if you divided it into two Circuits would it be necessary to have a fresh division of the Barristers, or would every one make his choice?—I should suppose they would make their choice.

651. With reference to the proposal for a third Assize for Civil business, do you find in your experience that in cases of magnitude and importance you can conveniently prepare a clause for trial in less than five or six months?

Mr. Murray.—If you are for the defendant you cannot, but if you are for the plaintiff

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you can do so. The plaintiff gets up his case, and takes his own time and opportunity for issuing his process, and the defendant is then, in reference to time for pleading, &c., too much at the mercy of the plaintiff.

652. In a case of any magnitude as to amount or importance, is there any great inconvenience in trying in London instead of at Liverpool; it is some extra expense undoubtedly?—*Mr. Lavie.*—If you ask me as a London Lawyer, I should say that it is very convenient in many cases; as, for example, in insurance cases, to have them always tried in London; but when I am speaking of what I can fancy a Liverpool Lawyer would feel upon the subject, it must of course be an inconvenience for him to come to London to try his causes.

653. A gentleman from Bristol said that they wished to have two Assizes there, because the London gentlemen liked to come down and try their causes?—I can explain that. At the end of Term, just before the long vacation, cases arise when we are too late to go to trial in London or Westminster, and then we have to select the last place, and Bristol hoping to be the last, and we go down there in the same way that we go down to Liverpool occasionally. Those cases are not tried at Bristol because we prefer Bristol, but because we have no other alternative at the moment.

654. It is better to submit that than to have the delay?—That is so. All these questions about trying important causes are very much compounded of a good many considerations. Sometimes it is very desirable for the litigants themselves that the cause should not be tried too hastily. It is a great mistake in my belief, to suppose that too great a facility of litigation is a good thing. I venture to think that the County Courts have caused more litigation almost than they have cured.

Mr. Murray.—Parties are apt to let their tempers get the better of their judgments in the outset of their differences.

Mr. Lavie.—Too facile a proceeding anywhere is a very bad thing. The very obstacles to going into the Court of Chancery very often brought about arrangements which were very satisfactory.

655. You think that the increased facility will not be an unmixed good?—No; I think it never can be; law is like medicine. I think it is not to be brought home to every man's door to be injuriously used.

656. Have you formed any opinion as to the scheme which has been proposed, of having Courts of Conciliation?—I never could understand the Courts of Conciliation.

657. Have you not seen that scheme?—No; compulsory arbitrations, I think, with submission to the judges, have been a great misfortune, and I hope that that point will be considered.

658. Do you think sending cases to the Master bad?—I think compulsory arbitrations are bad. I think that matter is worth considering; it is not satisfactory. I may observe that the County Courts do not affect the business of Mr. Murray or myself in the least degree.

The witnesses withdrew.

Adjourned till Monday next, at half-past 10 o'clock.

Monday, 25th May 1857.

THE RIGHT HON. SIR JOHN S. PAKINGTON, BART., M.P., IN THE CHAIR.

W. Sharpe, Esq.
25th May 1857.

WILLIAM SHARPE, Esq., examined.

659. You are a solicitor practising in London?—Yes.

660. We had the advantage the last time the Commission met of seeing here Mr. Murray and Mr. Lavie, who, we believe, with yourself, constituted a deputation from the Incorporated Law Society?—It was not exactly a deputation, but one or two points were suggested on which it was thought desirable that some of the members of the Council of the Incorporated Law Society should attend to be examined.

661. Accidentally you were prevented from coming on that day?—Yes.

662. The Commissioners were desirous to have the advantage of seeing you also, because they understood that you had given a good deal of attention to the arrangement of the Circuits in England, is that so?—A good deal of attention. Also I am rather more acquainted with the business in the country than those gentlemen, as I act a good deal as an agent for country solicitors, which those gentlemen, I believe, do not.

663. Amongst other suggestions for the improvement of the present system of Circuits, we have before us a plan from the Incorporated Law Society; were you a party to arranging that plan?—Yes.

664. We observe that in this plan there is a suggestion for three Circuits, with intervals of only two months between the first and second, and the second and third, and then an interval of four months between the end of the third and the commencement of the next year; are you still of opinion that that would be a good arrangement?—Assuming that there is going to be a change in the Circuits, as we have understood, that an increase in number has been mooted, we think that this is decidedly the best arrangement which can be made. It is the only one which allows of a vacation, which I believe the legal profession generally would think ought to be continued; and it is the only one which allows a Circuit

to follow a Term, and to be preceded by a Term. We believe that any arrangement which would throw two Circuits together, without an intervening Term, would be pretty well useless. Unless a Circuit follows a Term, and is also followed by a Term, it is not half the use that it would be upon any other system. We were not tied particularly to those times of the year. We only suggested those as times which we thought would be tolerably convenient. We thought that those would make a less change than any others; and would be the most useful arrangement, assuming that there were to be three Circuits.

665. In suggesting this arrangement for three Circuits, was it in your contemplation that each of those three Circuits should be regular Courts of Assize, both for Civil business and for Gaol Delivery?—We were only thinking of Civil business; there are at the present time Courts of Assize for Gaol Delivery three times a year. We were only thinking of making three Assizes for Civil business as well, which would of course be held simultaneously with the Assize for Criminal business.

666. You intended that all three of those Circuits should transact the Civil business of the country?—Exactly so, the Civil as well as the Criminal.

667. Did you propose that those Assizes should be held throughout the whole of the kingdom?—That is a point we did not mean to give a decided opinion upon; that is to say, we conceived that there are small counties for which possibly you need not make three Assizes; but perhaps the convenience of the country would be that if there are three for any great number of places, there should be three for all, because of the extreme difficulty of arranging it otherwise. There are undoubtedly particular towns where three Circuits would not be required.

668. Judging from your own experience as a lawyer, do you think that it is essential or desirable that there should be Circuits of Assize held throughout the country, with intervals so short as only two months?—The time submitted by the Council of the Incorporated Law Society gives an interval of at least three months; it leaves two months from the end of one Circuit to the beginning of the other, but it will give an average interval to each Assize town of at least three months. The first Assize town in each Circuit will be about three months off from the next Assize which is held in the same town.

669. You think it desirable to hold the Assizes as often as that?—In many towns very desirable. We find in London, with which we are all acquainted, that three times of Sittings in are year are not sufficient. We have in London Sittings after every Term, and intermediate Sittings in Term besides. London is so favoured, that there twelve times a year at which we can go to trial, and the country have only twice a year. That is the distinction between London and the country at the present time. It therefore seems to be no stretch to assimilate the country to London, to the extent of giving them three times a year instead of twice.

670. You have now sixteen Sittings in the year in London, have you not?—Some of the Courts have two Sittings in the Term, and some three. I put it at the lowest; I will say that there are now from twelve to sixteen times for trying causes in London and Middlesex, while, through the country there are only two; and we feel that towns like Liverpool and other large towns are really entitled to more, and are driven by the unfrequency of the Assizes either to give up their just demands or to compromise, or to arrange matters, or to try in London, which is 200 miles distant.

671. Do you think that if, instead of having three regular Assizes, an arrangement were made for dividing the year equally between two Assize Circuits, the convenience of the place to which you refer would be sufficiently met?—No, I do not.

672. You do not think that the Civil business of those great towns could be conveniently disposed of without three Assizes in the year?—I think three would be an improvement, and perhaps oftener, but I do not suggest oftener than three, because of the extreme difficulty of arranging it. We see great difficulty of arranging Assizes at equal periods of six months, and six months without altering the system very much, and particularly without omitting to pay attention to this particular point, namely, the great advantage for the despatch of Civil business, of an Assize following each Term:—Business arises during the term which goes down to be tried at the Assizes. Then there should be a Term following the Assizes for deciding points that have arisen at the Assizes for granting new trials. The interval is at present so short between Easter and Trinity Terms, that they are to all intents and purposes like one Term, and we believe that they might be joined or compressed into one Term with advantage.

673. The question put to you did not point so much at any difficulty which there may be in arranging equal division of the year, as at ascertaining from you whether the inconvenience of which you complain arises from the want of greater frequency of Assizes, or whether it arises in any great degree from the present very equal division of the year?—I do not think that the present unequal division has any great effect upon it; the time now is about five months and seven, or four and a half or seven and a half, I think.

674. Have you given your attention at all to the question of the re-arrangement of the country for the purposes of Circuits?—We have made inquiries in a good many quarters, and have thought as to where there should be Assizes held. Several large towns are particularly recommended; I have not considered it myself in any way as to a re-division.

675. You have not considered whether the number of Circuits might conveniently be reduced?—I think they could not be conveniently reduced. Our opinion is that the number of Circuits should be rather extended than reduced.

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676. The question does not refer to the Number of Assizes held in the year, but whether seven Circuits can be conveniently reduced to six?—No; we think not, certainly. Our opinion is that they should be rather perhaps increased to eight, because on the Northern Circuit at the present moment the business is very considerable and very important, and the Northern Circuit might, we believe, be divided into two Circuits. I think that every Judge who has been the Northern Circuit must know that, at Liverpool for instance, the business is not satisfactorily done through the immense pressure of it; a considerable proportion is (practically) left undone there.

677. What reason have you for saying that?—I am not alluding to any particular Judge, but there is a general feeling that when there is a heavy entry of causes there, the business has to be got through hastily or left undone, towards the latter part of the Assizes, owing to the pressure of time, and to its being frequently impossible (particularly at the Spring Assizes just before Easter Term) to get through the Civil business of the Assises satisfactorily.

678. Have you at all given your attention to the question whether, considering the London business of the Judges, the number of the Judges would bear reduction?—I have given a great deal of attention to it.

679. What is your opinion?—Certainly that they would not bear reduction.

680. Why?—I assume, which I suppose would be admitted, that it would not be advisable to reduce the number of the Judges sitting in Banco; that is, that the country generally would require three or four Judges to be sitting in Banco, as at present. If they were to be reduced into one Judge sitting in Banco, instead of four, then there might be a great reduction; but I do not believe that it would give satisfaction to have it less than the present number.

681. What do you say as to the difference between three and four Judges?—There are at the present moment sometimes three Judges. The Judges, I suppose, arrange among themselves how many shall sit in Banco at any particular time, having regard in so doing to the nature of the business which is coming on, and to their official engagements elsewhere. The Judges, I suppose, so arrange it with reference to the number thought to be required, and to the circumstances—so that occasionally there are three, and occasionally four, and sometimes only two.

682. As a principle, which should you prefer, three Judges or four on the Bench?—Four Judges in most cases, although my opinion is of very little weight.

683. Do you concur in the opinion which has been expressed to this Commission, that the public would be better satisfied with the decision of a single Judge than with the decisions of a majority of two out of three Judges?—No; I do not consider that the public would.

684. But you think that it is far better for the public to have four Judges sitting in Banco so as to ensure a majority of three out of four, than to have three sitting in Banco, thereby giving only the majority of the casting vote?—I do; I think that the decisions are better, and that they give more satisfaction than they would by having either three, two, or one.

685. Have you anything to add to what you have already stated?—There has been a feeling, I believe, that the business in the Courts in London has fallen off, in consequence of the County Courts; that there has been a gradual diminution of the business of the Superior Courts in consequence. That is a point which I have taken considerable trouble to inquire into, and as far as our experience goes in our own practice, which is considerable, there has not been any diminution. I do not mean that a great deal of business has not been taken from the Superior Courts into the County Courts, but that the business of the country has been increasing simultaneously, so much that the Superior Courts of Common Law have quite as much to do now as they had before the County Courts Act was passed. We find in our practice that there is quite as much now as before the County Courts Act was passed in 1846: again, we find that there is very much more business now than there was before 1830. Up to about 1830 there was only the Court of King's Bench which did any material amount of business. The Courts of Common Pleas did much less, and the Court of Exchequer did comparatively very little indeed. There were only (I believe) eight, or some other very small number of Attornies in the Court of Exchequer who were entitled to practice there, and the business was very little indeed; but now there are three Courts sitting, all of which are open to the whole Bar, and all the Attornies, and they all have a very considerable amount of business, and I think it would not be saying too much to state, that there is more than double the time occupied at present in Judicial business in London than there was before 1830, notwithstanding the County Courts, and that there is quite sufficient increase to employ all the Judges fully, notwithstanding the number of Judges has been increased from 12 to 15.

686. We understand you to express a decided opinion, that the whole of the Judges, according to the present business, are fully and fairly occupied?—Yes, and though I do not wish to recommend a greater number, I believe that there are parts of the business to which more time might be advantageously devoted; there might be a greater number of Sittings for the trial of causes in Middlesex. I also think that more time might be given by the Judges at Chambers. Very important cases come to the Judges at Chambers, through the immense increase of business which has been going on during the last eight or ten years.

687. In your opinion is the present mode of conducting business at Chambers by the Judges satisfactory?—It is very satisfactory, except sometimes we find that the hours are not long enough.

688. What improvements would you suggest?—We would suggest that a Judge should sit there every day for four or five hours.

689. What limit is there to the hours at present?—I believe at present the Judge frequently comes in the afternoon.

690. But he never goes away till all the business is done?—That is so. I have no doubt the Judge does not ever leave Chambers while any parties remain to be heard by him.

691. We understand you to say that the bussiness at Chambers is satisfactorily done, but that you think there ought to be more hours devoted to that business?—I understood the question to imply whether the decisions given by the Judges at Chambers were satisfactory. I think they are quite satisfactory.

692. The question asked you was not whether the decisions were satisfactory, but whether the mode of conducting that part of the Judges' business was satisfactory? and we understand your answer to be that it is so, with the exception that you think that more hours should be devoted to it?—Yes.

693. Will you be so good as to explain in what respect you think the hours devoted to Chamber business are too few?—I think that the business is hurried over a little more than it would be if more time were allowed for it.

694. Would you recommend that there should be a stated number of hours without reference to the amount of business? how would you correct the practice?—I should begin at an earlier hour in the day.

695. What is the usual hour of commencement now?—During Term the usual hour is half-past three in the afternoon.

696. You would suggest an earlier hour of the day?—Yes.

697. We presume you think that the attendance of a Judge at half-past three almost of necessity involves some haste, if there is much business to be done?—I think it does; the Judges do the business admirably there, but yet it implies haste, whether it be in the Judges or in the Attornies—the business must be done before post time.

698. Do you know the reason of the practice of the Judges coming so late to the Chamber business?—They are engaged sitting in Court at Westminster. One Judge leaves Westminster for Chambers at half-past two or three.

699. It varies at different times?—Yes.

700. Whenever practicable they sit at Chambers at eleven o'clock?—Yes, and in vacation also.

701. The time is sometimes eleven o'clock?—Yes.

702. Have you experience enough in attending Chambers to know whether more time is occupied in Chambers when the Judge sits at eleven, or when he sits at half-past three, or whether there is any difference?—My belief is that more time is occupied when he sits at eleven.

703. What is the usual time at which the Judge leaves Chambers? supposing that he arrives at half-past three, how long would you say that he sits upon the average daily?—From an hour and a half to two hours and a half, I believe.

704. Do you think that two hours would be a full average?—Yes; it varies. I have sometimes seen the business in some of the Courts all over by five.

705. Have you any opinion to express to the Commission with regard to the mode of conducting the Sittings at Nisi Prius in Term?—I think rather a larger number of days should be given. I do not think the business is badly done; some Courts have two and some three days, for which we can give notice of trial during term; if there were more frequent times it would be an advantage, we think.

706. You think, with respect to that, as with respect to business in Chambers, that for the satisfactory transaction of the business more time is required?—Yes; I think it would be an advantage if there were more time.

707. Are you aware that when the Sitting begins, although a day is named for the beginning, the Judge sits until he has finished his list, whether it is two or three or any number of days?—Yes; at least I believe it is so generally in the Common Pleas, though not always in the other Courts.

708. Then, although more days might be given you, for which you could give notice of trial, could you have more days devoted to the Sittings? In the Exchequer they sit every day during the Term at Nisi Prius except the first day of Term. In the Common Pleas there are two days appointed for Westminster and two for London?—That is so.

709. Then when the Judge goes to one of those places he remains sitting *de die in diem* till his list is clear?—Yes, that is so, I believe, in the Common Pleas, where the business is less than in the other Courts; but it is not always so in the Queen's Bench or Exchequer.

710. The causes tried in Term are almost entirely common juries are they not?—Almost always.

711. Unless by special order?—Unless by special order.

712. With regard to the Nisi Prius Sittings in the City during Term, do you consider them productive of inconvenience to the suitors and the bar, or the contrary?—I believe

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that the only inconvenience is in obtaining the attendance of Counsel in the City during Term. There is an inconvenience in counsel being engaged at Westminster and being wanted at the same time in the City. It has been thought possible that the City Sittings might be given over in Term time on that account, and that the Westminster Sittings might be increased because of the inconvenience to counsel, but on no other account.

713. It is not inconvenient to the Attornies?—Not in the least.

714. A suggestion has been made that there should be two Circuits; one commencing about the 10th of January, and the other about the 10th of July; and that there should be three Terms, one Term preceding each Circuit, although not immediately, for it would be the same as now with respect to the Summer one. Have you at all turned your attention to that suggestion?—I have not adverted to those particular days, but I do not think that that would meet the difficulty as to giving more opportunities of trial in the country.

715. Do you think that any arrangement could be made with respect to changing venues from the country, which with those two Circuits would make it satisfactory, so as to enable persons in the country absolutely to keep their venues in London and Middlesex, and try their causes in respect of debts in London and Middlesex at their pleasure, without any control upon them?—My opinion is that it would not be satisfactory, on account of the expense of bringing witnesses to London.

716. You think that the expense of bringing witnesses to London would be such as to make it not so satisfactory as the three Circuits?—I think so. I would draw the attention of the Commission to the time before Lancashire was divided. I have not been able to find any returns, but I believe that the business greatly increased upon the Liverpool Assizes being held.

717. Not in bringing causes into the list. The number tried and going to a jury was much larger. The Cause List at Lancaster was larger than at Liverpool, except once in the Stag year?—That confirms the view of causes being tried, that parties were able to try their causes.

718. All the business at Liverpool, as you well know, was transacted through brokers, and if in a mercantile cause there were five or six brokers kept at Lancaster two or three days, they were in a state of rebellion. You stated that you did not recommend a third Assize for the whole of England, but that for some counties it would be requisite, you thought?—I do not know whether it would pay for the expense of it. I think it would be satisfactory even to the smallest town to have a third Assize.

719. For which towns especially would you recommend a third Assize?—Liverpool and Manchester. I think it might be a great advantage to a large town like Hull, which is a mercantile town, and a great way from York, at the present moment. Plymouth is a town from which the Council of the Incorporated Law Society has received a communication, and there they strongly speak that they should be glad to have Assizes held, and three Assizes a year. At Plymouth and Devonport, in the immediate neighbourhood, they have, as I understand, a population to the extent of 120,000 inhabitants.

720. You would not see any use in a third Assize, we presume, on the Wales Circuit or on the Norfolk Circuit?—South Wales is becoming extremely important. At Swansea and Cardiff commercial business is increasing immensely.

721. But the Assizes appear to last but a very few days there. You spoke of three Assizes at Plymouth: where do they now try their causes, at Bodmin or at Exeter, if there is such a thing as a cause arising at Plymouth?—At Exeter, I presume; because they would lay their venue in Devonshire.

722. They are within an hour and a half of Exeter, and are you aware that at Bodmin there was not a single cause at the last Assizes?—I was not speaking of Cornwall, but of Devonshire. I believe that in Cornwall there is very little judicial business.

723. And at Exeter the Cause List has dwindled away for some years to a very insignificant amount?—Yes; very probably it is so.

724. Are you aware, with reference to Hull, that it is within an hour and a half of York?—We know that an hour and a half is 50 to 80 miles.

725. It is 40 miles. Have you any idea of the number of causes that are tried arising at Hull in the course of the year?—No; I am speaking now of what the Hull Law Society particularly recommend with regard to that town. We have communicated with a good many Law Societies, asking them questions. Hull is one, and Plymouth also, that inform us they are desirous of having an Assize, and three times a year.

726. Are you aware that, whether rightly or wrongly, one of their complaints is, that they do not try their causes because they have not an Assize where they can try them cheaply?—I do not know that they have gone into that.

727. Do you consider the length of the Long Vacation the time during which no Writs are issued, and no business is transacted in the Courts of Westminster Hall an evil, or the contrary?—I suppose the public at large consider it an evil. There are so many arrangements dependent upon it, and it is a convenience to so many persons, that I hardly like to give an opinion. I imagine, that the public at large would say that the lawyers are rather idle during two months of the year, while the rest of the people are working.

728. Do you think that if two Judges remained in town during the Long Vacation, and a certain description of business were allowed to continue to be done, it would be an advantage to the public, assuming that there would be one or two Sittings at Nisi Prius during that time?—I must say that I think there would be very little done during the time; all lawyers

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having been imbued with the notion, that no business of that sort is going on during September and October.

729. Do you not think that there are both Solicitors and Barristers who would be glad to be in London during that time for the purpose of transacting business?—I think that would be to such a small extent, that the business would be badly and unsatisfactorily done.

730. We are not speaking of the heavy business, but of the Common Jury business.—I think that it would be unsatisfactorily done. I think that perhaps the County Court answers that purpose for small business at the present moment.

731. Why should not a Judge in town try a cause in the Long Vacation, as well as he tries it out of the Long Vacation? Why do you think that it would be unsatisfactorily done? Do you think that the Counsel would not be equal to such cases as those, or what is your objection?—I think that business of a small description might be done then, but only business of a small description. I think that the best counsel would not be there: the best attention would not be given to the business.

732. Can you give us anything like an account of the average time in which a case of any importance is brought to trial after it is once begun?—It is very expeditious at the present moment.

733. Taking the average of cases, supposing you are for the Defendant, in what time should you say that you would be able to bring the cause to trial in the usual way after the Writ is issued? We are supposing that you have a Court open, what is the time which would be fairly requisite for preparing yourselves on the one side, and the other for the trial of the case, if it is a matter of any importance?—A month on an average; but if much evidence is to be got up beforehand, it cannot be done in a month.

734. The question assumes that you are for the Defendant. The Plaintiff would get up his case before he issued his Writ; but we are supposing that a Writ is issued against your client, and that he comes to you, and that it is a grave matter, and a matter perhaps of a little complexity, a mercantile transaction; in what time should you say that you could fairly and reasonably go to trial with that cause?—I think, as a general rule (if a rule is to be laid down), a month may be named, although I might often individually wish for more time.

735. For both sides?—I was speaking particularly as to the Defendant. There are, however, many cases in which exception might be made, in which more time would be required, or the witnesses may be at a distance; and then a special application would be made to the Court or a Judge to postpone the case on that ground, but as a general rule, I think a month may be treated as sufficient if any rule is to be made, subject to application for extension of the time when necessary.

The witness withdrew.

Mr. E. L. Rowcliffe.

Mr. Edward Lee Rowcliffe examined.

736. You are a member of the firm of Adlington, Gregory, and Company, solicitors?—I am of the firm of Gregory and Company, their successors.

737. You have been in the room during the examination of Mr. Sharpe?—Yes.

738. You have heard the evidence which he has given with regard to the possibility of any more advantageous arrangement of the Circuits. Have you any opinions to express to the Commission upon that subject?—I have considered the subject, and I certainly think that a third Assize would be very useful in many places, especially in the great manufacturing and commercial towns in the north.

739. In giving that opinion, are you speaking only of Civil cases?—I am speaking both of Civil and Criminal business. I have a strong opinion of the importance of the Criminal business.

740. You think that for both Civil and Criminal business it is necessary to have three regular Assizes?—I think so, in large towns.

741. Are you conversant with the scheme proposed by the Incorporated Law Society?—I am not. I do not give any opinion about it: what I have said as to three Assizes is founded upon this belief, that a great many claims are abandoned solely because parties have not a reasonable opportunity of trying them. That belief is founded on the fact that in the Borough Court of Liverpool, which sits four times a year, from 50 to 100 causes are entered for trial at each Sittings. Some of them, I know, are very important actions for infringements of Patents and so forth, which, I believe, would be tried in the Superior Courts if facilities were given for them.

742. You allude to the Passage Court?—Yes; the Court over which Mr. Edward James presides.

743. Mr. Justice Crompton formerly presided over it?—Yes.

744. We presume, after what you have said, that you do not think that any arrangement for an equal division of the year would be a compensation for the want of three Circuits?—I do not. My strong belief is, that merchants frequently give up disputed accounts, which they would have a fair chance of recovering, simply to close their books. They say, We cannot try in a reasonable time, and therefore we will give the demand up and close the account. And again, that they would rather give up a disputed account than have the

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personal trouble and inconvenience of going a long distance and being detained a considerable time in trying it. Whether a debt is recoverable or not, frequently depends on whether a speedy trial can be had.

745. It is hardly necessary for us to ask you, with these opinions, whether you think there would be a possibility, with any degree of prudence, of diminishing the number of the Judges?—I do not see how it can be done.

746. We observe that you have in your hand a written paper; what does it refer to?—The whole business of the Courts and the Assizes; and I beg leave to submit it to the Commission.

747. The Courts in London and the Assizes?—Yes.

748. Does that paper refer to the transaction of business in Chambers?—It does.

749. And the Sittings at Nisi Prius?—And the Sittings at Nisi Prius also.

750. Will you be good enough to give us the substance of the contents of that paper?—I begin by saying that I agree with Mr. Sharpe, that the business of the Common Law Courts has not fallen off, but that within the last five or six years it has increased, and is still increasing. Then I say that the character of the business has very much changed; that it has become less local and more commercial; that boundary questions and water-course questions, and so forth, very seldom arise now, and that the questions to be provided for are chiefly those arising out of mercantile transactions. That in commercial questions there are two things in my opinion necessary. The first is, that Plaintiff should be able to try at a time certain, somewhere or another, as speedily as the process of the law will allow. The other is, that in other cases he should have a convenient place provided for him, near to him and easy of access, where he could try matters in which time is not so great an object. Then I say that, to provide for the first, I think that the Plaintiff should have a right, if he chooses, to avail himself of it, to lay his venue in London, and to keep it there, subject of course to a power on the part of the Judge to change it if there were any special circumstances, the Judge also having a discretionary power over the costs. Then I say that I think the Sittings in London during Term should be discontinued. I think they are inconvenient to Judges, and certainly they are to counsel and to solicitors who are largely engaged.

751. Are we to understand you, by what you have just said, to express an opinion, that if the third Circuit were held throughout the country it would be possible to discontinue the Sittings in Term?—No; only in London, as distinguished from the Sittings at Westminster.

752. Would that be, in your opinion, one result of having three regular Circuits?—No. I would try all causes at Westminster during Term, and only hold sittings in London after Term. I would have a sort of central Court sitting in Middlesex, three Courts of Nisi Prius sitting there, whenever necessary.

753. It is merely to prevent the necessity of going to Guildhall?—Yes. That is merely an arrangement of detail.

754. Are we to understand you to recommend that there should be a third Circuit throughout the whole of England?—No; certainly not.

755. Only in the more populous towns?—Only in the more populous towns.

756. Would you hold that third Circuit at the present places, or do you propose that the Judges shall go to other populous places as well: for instance, that they shall go to Manchester as well as to Liverpool, to Hull as well as to York, and so on?—Certainly, I think so. I should readjust the whole Circuits. I think that the present arrangement is quite obsolete, and that it was adapted to a different state of things from that which is now existing.

757. Do you think that, in order to remedy the evil now existing, it would be necessary to go to other places than those at which Assizes are now held?—Yes.

758. Taking Manchester and Liverpool, and having regard to ordinary Civil business, do you think it makes any material difference, either in expense or in general convenience, to parties in Manchester, to be obliged to try their cases in Liverpool?—I should say so, certainly.

759. It is your opinion that they ought in justice and fairness to have it in their power to try the questions at Manchester?—Most certainly; and one reason which I give for it is this, that although I believe the Salford division of Lancaster is as populous as the Liverpool division, the Salford division only produces, I think, about one-fourth or one-fifth of the causes. I started with the statement, that I think a great number of questions, far more than are tried, are abandoned or compromised, simply because merchants in large business will not leave their places of business to go from Manchester to Liverpool to try them.

760. Then we understand you to be of opinion not only that convenience and expense are at stake, but that parties are positively prevented from trying their cases by the fact of the necessity of trying them at another place?—That is certainly my opinion.

761. Are you yourself actually conversant with any cases in which it is within your knowledge that that cause has so operated?—I cannot say that I know of any case; but it has been a matter of general complaint to me from all parts of the country.

762. To such an extent as to lead you to that belief?—Certainly.

763. You do not know of any actual cases where, within your knowledge, causes have been abandoned on that account?—No, I cannot say that I do; but this I do know: my

house is chiefly an agency house, clients come to me, especially from the north, and they say to me, people really will not try questions, if they have the trouble of leaving their places of business for some days to try them; they would rather give them up.

764. We suppose that an arrangement of that sort would increase the length of the Circuit very much, the time that it would take to try the different causes. Suppose, for instance, that instead of holding Assizes for Civil business at York only, there were also Assizes held at Hull and at Leeds, in your opinion would that introduce a much greater amount of causes to be tried?—I think so, certainly; but then I should remodel the whole of the Circuits, and I should throw some of these large towns into the most convenient of what I would call the present agricultural Circuits, so as to make a more equitable adjustment of the business.

765. Will you proceed with the substance of the statement in your paper?—I next suggest that I think some arrangement should be made for trying Special Jury causes in London between the present Easter Term and the present Trinity Term. There is now a long interval when Special Jury causes cannot be tried in London.

766. Practically from the end of February until the middle of June?—Yes. Then, I say, "To attain the second result, a trial at the most convenient place, I think a new arrangement of the Circuits imperatively called for." Lancashire, with some portion perhaps of Yorkshire, would form one Circuit. I look upon the present Northern Circuit as most cumbersome and inconvenient; it is quite impracticable, it seems to me, to deal with the amount of business which there is there already.

767. We understand your statement not to amount to any definite plan, but only a general opinion that the present business of the Northern Circuit is too great?—Certainly.

768. And that there ought to be a rearrangement of the Northern Circuit?—A rearrangement of the Northern Circuit, and a bringing the Assizes into the large towns.

769. Not with a view to diminishing the number of Circuits, but with the view of facilitating the transaction of business?—Yes, to facilitate the rearrangement and transaction of business. Then I say that the Assizes might, I should have thought, have been distributed more equally throughout the year; the Spring Assizes commencing towards the end of December or early in January; and there being, as Mr. Sharpe suggested just now, three Terms instead of four, a Term immediately after each Assizes.

770. Are you now speaking of two Circuits or three?—I am speaking of two Circuits throughout the country, and a third Circuit in places which require it.

771. Two Circuits generally?—Two Circuits generally. I think that Liverpool and Manchester at once require three Circuits; experience would show how far the principle, once conceded, might be extended to other great towns. I do not go beyond Liverpool and Manchester, because I know more about them than I do about other towns.

772. Have you any other suggestions?—As regards the cause lists in London at present, they are very well arranged; but I think it should be a great object never to put more causes into the paper than can be got through. I do not say it is done at present, but still I think that should be the object.

773. Into the paper for what period?—For trial each day. In London we have daily cause lists, and I have said in my statement that the expense of a day's attendance in Court, either in London or in the country, is very great; seldom less than 10*l.*, and I have known cases in which it has been even 100*l.*, and more. Scientific witnesses require their ten guineas a-day, and even more. To carry out that object, I suggest that cause lists might possibly be prepared in the country.

774. That has been done at Liverpool?—Then I thought also that causes in the country might perhaps be entered, as in town, some few days before the Commission day. I do not know how far that would work practically; but it has just occurred to me, and I have mentioned it for what it is worth. Causes might be entered with the Under Sheriff, or with some other person, so that an opinion might be formed of the business which there was to be done. Then I think it is most important that a sufficient time should be given for the Assizes throughout the country.

775. Do you mean to imply that you think that at present the time is insufficient?—I think that at present the Judges are frequently obliged to sit from nine o'clock in the morning till seven at night, or even later, and that is certainly a greater amount of labour than I could undergo. I cannot understand how it can be done.

776. That inconvenience which you are now speaking of, with regard to the labour, applies to Counsel, the Public, and Jurymen, as well as to the Judges, does it not?—No doubt; and even more strongly. I have stated in my paper that I have often heard the opinion expressed that the attention of juries cannot be kept up to the close of the day.

777. Is it not a very common practice for the Courts to sit on the Circuits till nine o'clock, ten, and even eleven at night?—We were engaged in a cause some years ago, Doe dem. Bainbrigge *v.* Bainbrigge, in which the Judge sat till very late; I believe eleven o'clock at night.

778. Is it not frequently the practice for the Judges to sit till a very late hour in the evening?—I think frequently until seven or eight o'clock at night.

779. Do you think it possible that justice can be administered at a very late hour of the day, with an exhausted Court, so well as it ought to be?—I only say I could not do it if I were a juryman.

780. Have you any other suggestions?—I say that I certainly think that not less than

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four Judges should sit in Banco. I think it is the most satisfactory tribunal that can be constituted, and I say as a proof of it, that I do not think that in nine cases out of ten in which an appeal is allowed from a decision in Banco there is an appeal; and where there is an appeal I should say it is frequently invited by the Court either to determine some new point of law, or to overrule some obsolete decision.

781. You think that to make decisions in Banco so satisfactory as they are, it is essential to have four Judges?—I think so, certainly. And again I would say, to show how much weight attaches to the judgment of a great number of judges, that there is very seldom indeed an appeal from the Court of Error to the House of Lords. I have never had one in my experience; they do occur sometimes, but very seldom. I look upon protracted litigation as most unfortunate to all parties engaged in it, and that it is most desirable to obtain a decision of so much weight as to be final as speedily as may be.

782. The plan which you propose of holding Circuits at other towns, and also of not sitting late, would considerably lengthen the actual time employed upon the Circuits for Civil business?—Perhaps it would; but if the whole business of the Circuits in the country were remodelled, I do not know that that consequence would follow.

783. We are speaking of the present state of things: it might be so remodelled, you think as to obviate that necessity?—Yes.

784. So that no Circuit would then occupy more time than the Northern Circuit has done?—Perhaps not.

785. We know that you can give information with respect to the business at Chambers, and we should be glad to hear what your opinion upon that subject is?—I think the business at Chambers is about the most important business that a Judge has to get through. I have brought together here a few of the applications which he has to dispose of; Interpleader cases, Garnishee orders, applications for Writs of Injunction and Mandamus (they are now applied for at Chambers), applications for Writs of Certiorari and Prohibition, applications for orders to hold to bail and to set them aside, all of them important, besides a great number of Interlocutory applications in pending actions, such as for inspection, orders for examination and cross-examination of parties, for commissions, to reform pleadings, &c., involving sometimes questions of great magnitude and nice points of law, practice, and discretion. I may say, that upon the point whether the Judge thinks that a commission should issue may depend the recovery of the debt in an action, a debt of not unfrequently 10,000*l.*, and even much more. I think that provision should be made for the regular and early daily attendance of Judges at Chambers.

786. What do you call the regular attendance?—I think that there should be a Judge at Chambers every day at 11 o'clock, to sit there during the whole of the day; that is my impression.

787. To wait for any custom that may come to him once an hour?—An immense deal of custom does come there.

788. Do you think that under the present practice of Judges generally not going to Chambers till half-past 3, time remains for the proper transaction of the business?—I think the business is very satisfactorily done, but I think more time might be devoted to it with great satisfaction to Counsel and to parties. For instance, questions of pleading, to discuss them thoroughly, would require an hour, an hour and a half, or two hours, and I have suggested that they might be taken by the Judge who sits in daily attendance at Chambers, or possibly, which I think would be a great advantage, they might be taken in the Bail Court in public. When the Judge does not come to Chambers till 3, and it is necessary to obtain his fiat before a writ can be on summons issued, a writ of Capias for instance, the offices closing at 3 in vacation, the writ cannot be issued until the next day, so the Defendant may escape.

789. Are there any other suggestions which you have to make?—I would suggest that references are now becoming very favourite modes of determining disputes, but practically they are most expensive, and it occurs to me whether certain references might not be taken by Judges instead of by Counsel.

790. How do the references before the Master answer?—Very well. I should say that the Masters are already rather overburdened. With respect to the long vacation, I would observe, that writs are issued and judgments by default are signed in the long vacation now, only pleadings are stopped.

791. There is no contentious jurisdiction in the long vacation?—No.

792. Any one by pleading, although he has no defence, can at once stop the cause?—Yes.

793. A person by appearing stops the case?—No doubt.

The witness withdrew.

Mr. C. J. Palmer.

MR. CHARLES JAMES PALMER examined.

794. You are a member of the firm of Palmer and France, solicitors, are you not?—Late Palmer, France, and Palmer, now Palmer, Palmer, and Bull.

795. Are you extensively engaged in agency business?—In the Home counties principally.

796. You mean the counties in the Home Circuit?—Yes, but I add Hampshire.

797. With reference to the Southern part of England, with which you are more conversant, will you give the Commission your opinion as to the necessity of any re-arrangement of the Circuits?—I do not think it is necessary, upon the Home Circuit, except perhaps in Surrey, which I look upon now as what may be called, a second sitting after term, to have another Assize for Civil business; but it is necessary for Criminal business, especially in Kent, where of late we have had a Winter Assize, and sometimes in Sussex. This last winter there was one in Sussex. The Criminal business in Kent is, I may say, enormous, although a large number of prisoners go to the Central Criminal Court twelve times a year. But I think that for Civil business two Circuits are sufficient.

798. Does that remark about the Civil business apply to all the Southern part of England, with which you are familiar?—Yes, I think so, except in Surrey.

799. Do you think that the Criminal business in that part of England is progressively increasing?—Certainly in Kent, and in enormity. I think there never was such a time as this present year—there will, in all probability, be six executions between December last and including the Summer Assizes.

800. Do you think there has been a progressive increase in the last few years, independently of this last winter, to which you have referred?—Certainly, in point of number in Criminal business.

801. It it your opinion that the causes which led to that increase of crime in the last winter were rather of a temporary than of a permanent nature?—Of late I think an increase of crime has come into the County of Kent, from the Barracks at Shornecliffe; and since the war there has been a great increase. Soldiers have been sent home. At Woolwich, Gravesend, and Deptford, we have had an increase.

802. Do you allude to the discharge of soldiers owing to the disbanding of the army?—Many serious offences are committed by men in the service.

803. Looking to the increase of crime in the last few years, and the present state of crime in that part of England, do you think it is necessary that there should be permanently three Assizes in the year?—I think in Kent there should be a third Assize.

804. And would you have it an Assize for Gaol Delivery, or for trying Assize Cases exclusively?—I think a Nisi Prius Court might be held at the same time. It might entail the necessity of having another Judge, but it would make very little difference as regards Counsel and Jury. I do not think that there is a necessity for increasing the number of Circuits for Civil business, because certainly upon the Home Circuit, notwithstanding what has been said as to the Northern Circuit, the Civil business has vastly decreased in point of number of causes. There are not many heavy cases, and from my experience I think that now very few causes go down to trial upon the Home Circuit, except in Surrey, unless there really is something to try. I can remember the time when the question of property in a hedge, a ditch, or the cutting of a bough, would cause as much litigation as any mercantile question now, but that has all gone by.

805. Do you think that the time occupied in trying the Civil business of the Home Circuit has diminished?—Undoubtedly it has: we used to allow a week for Sussex, and at the last Assizes only two days were allowed, and yet all the business was got through.

806. With regard to Hampshire do you think a third Assize necessary. We understand that you are now giving an opinion to the Commissioners with respect both to the Home Circuit and to the county of Hampshire?—Yes; I was going to refer to Hampshire presently, and to state what I would do with respect to the alterations of the circuits.

807. From your knowledge of the Hampshire business do you think that a third Assize is necessary there?—Not for Civil business, certainly, nor do I think for Criminal business.

808. With reference to the Home Circuit do you think that a more equal division of the year with two Circuits would attain the object with regard to Criminal business?—Yes, if it did not encroach on the Long Vacation.

809. Do you think that a more equal division of the year, with two Circuits, would meet the requirements of the Home Circuit for Criminal business, without having a third Assize?—It might do so by making the Circuits as nearly as possible six months apart; that is to say, January and July, or December and June.

810. Do you think that that would answer the purpose as well as having a third Assize?—Generally it would, but there are many cases which require to be disposed of—take cases of murder, which are somewhat common now in Kent—but I think that in those cases the prisoners might be removed to the Criminal Court and tried under Lord Campbell's Act, instead of holding an Assize; after all, the majority of cases are trifling, and certainly most of them might go to the Quarter Sessions.

811. You stated that you had some suggestions to offer to the Commissioners respecting the arrangement of the Circuits, will you be so good as to state them?—I think, as regards the Home Circuit, Hampshire might be added to it. I think Essex might be thrown into the Norfolk Circuit. The part of the Home Circuit north of the Thames, I would put into the Norfolk Circuit, and I think generally throughout the kingdom the Circuits might be altered. The Norfolk Circuit, I believe, is the shortest in point of time, the Oxford Circuit is longer—I think the Norfolk is the shortest of the whole.

812. Would you alter the Circuits with a view to equalization, or with a view to diminishing the total number—diminishing them to six rather than seven?—With a view to equalization, certainly.

813. Not to reduce the number?—No; I do not think the number could be reduced.

814. Is it your opinion with reference either to the Assize business, or the London

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business, that the number of Judges now in existence should be reduced?—Certainly not, as regards country business; I think as regards London business they might be reduced.

815. Supposing any scheme were adopted for reducing the Circuits from seven to six, would that enable us to reduce the number of Judges as regards country business?—It would only make two Judges difference, but I do not think you can do it with advantage to the public.

816. With regard to London business, to what extent do you think the number of Judges can be reduced?—I think three Judges sitting in Banco would be quite sufficient. I think that in all cases there ought to be an odd number of Judges presiding in Banco, so as to avoid the possibility of having a tie. I have a case now before me, which has gone up to the House of Lords, which was argued first before eight Judges in error, and upon that case there was a tie of two fours. The case was re-argued before ten Judges, and then I was informed that there was a tie of two fives, but after some time the Court of Error gave judgment. Nine Judges gave their judgment, and the numbers were six and three.

817. Are you speaking of a case about a warrant of attorney?—I am speaking of the case of Billitter *v.* Young, that case is gone up to the House of Lords. Lord Wensleydale gave an opinion in the minority. Since he has been called up to the House of Lords, that case has gone up to the House of Lords.

818. Has that case of a tie often occurred in the sittings in Banco with four Judges?—Not very often.

819. Wherever it does happen it amounts to a refusal of justice?—I do not say that wherever it does happen the original judgment stands. I cannot say that it amounts to a refusal of justice. It amounts, in point of fact, to an injustice, because the party who has brought up his appeal can get no final judgment upon his appeal.

820. It makes that proceeding an abortive one?—I do not use the term injustice disrespectfully.

821. How many cases of two and two have you known?—I cannot refer to many, because I admit that it seldom happens, but still it does happen. There should be the possibility, at all events, when a case goes up to appeal of there being a binding judgment upon it.

822. We have had very strong opinions expressed before this Commission, that the decisions of four Judges in Banco are much more satisfactory than of three, on account of the greater majority which is necessary, and therefore the greater weight which attaches to the decision. Do you concur in that opinion?—I only say that my opinion is, that three would be quite sufficient, and I refer to the Court of Appeal in the Court of Chancery, where at most there are never more than three Judges, and seldom more than two. At times, the Lord Chancellor calls in the assistance of the Lords Justices, but as I said before, at most there are only three Judges, and taking the Lord Chancellor's Court as the highest Court of Appeal in the Court of Chancery, I think that three Judges in the Common Law Courts would be quite sufficient.

823. Then we presume you do not concur in the opinion which we have heard that a decision made by a majority of two out of three is so unsatisfactory that even a decision by a single Judge would be more acceptable to the public?—No.

824. I believe you are Agent to the Under-Sheriff?—We have been Under-Sheriffs for the county of Sussex since 1802, and for Kent since 1821; also for some other counties.

825. As such you have had a great deal of very important business—interpleaders with respect to executions?—A very large number.

826. What do you say as to doing the business at Chambers?—I think that the business at Chambers requires alteration in many respects. I think that a great deal of the business which now comes before the Judge at Chambers might go before somebody else—say one of the Masters, because we know very well that there are a great many trumpery applications—Summonses for times to plead, Summonses for particulars, and a variety of other Summonses, which take up a vast deal of the Judges' time, and upon which anybody could decide. I clearly recollect its being tried once. It was in the old Serjeants' Inn Hall. Mr. Walker attended with the Vacational Judge. I believe that gave very great satisfaction. I think that it might be left to the discretion of the Judge's Clerk, upon granting the Summons, whether that Summons should be made returnable before a Judge, or whether it should be made returnable before a Master sitting in Chambers.

827. Are you aware whether that would be as acceptable to the class of persons who come to the Judges' Chambers as it is at present?—I think so.—It would be upon common matters, of course. Let a matter that requires the Judge's decision by all means go before the Judge. With regard to the number of causes which are tried, I think a vast number of those causes might be tried before some other tribunal. It is a difficulty certainly now since the County Court Act to suggest before whom those causes might be tried. The County Courts have now jurisdiction up to the amount of 50*l.*, or beyond it by consent. Take a builder's bill, or a carpenter's bill, or a bill for clothes amounting to 50*l.*, and it will be a matter of very considerable discussion and very considerable enquiry, whereas a jeweller's account for 500*l.* may be constituted of only one or two items; therefore, why should not the latter cause be tried before somebody? I do not know whom.

828. As the business at Chambers now stands do you think that the time given to it is insufficient?—I think it is insufficient.

829. How is it with regard to the Sittings at Nisi Prius—do you find that the time is insufficient there?—I think that the business at Nisi Prius might be altered by doing away

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with the different sittings, that is to say, the second and third sitting, and so on, and giving notice of trial for a particular day; and in town causes I would suggest that that could be carried out in this way,—that the cause should be set down before notice of trial is given, and that the Marshal, at the time the cause is set down, should name a day for which notice of trial should be given. The Marshal or the Associate can always judge pretty well what the causes are like. Set the cause down for a day named; then give notice to the opposite party that the cause has been set down, and is appointed to be tried on such a day.

830. Have you considered whether causes of a trifling nature, for the mere recovery of debts, might be tried during the Long Vacation with convenience to the public and to the profession?—I think so. I hesitate to give any opinion as to before whom they should be tried, because I tried a great many causes as Deputy Sheriff, under the Writ-of-Trial Act, before the County Courts were established. I think, as far as my experience goes, it worked tolerably well, and I think even now a Judge might have a discretion, particularly during the Long Vacation, to direct a cause to be tried, say before the Sheriff, or before an Assessor.

831. Supposing that one or two Judges remained in town during the Long Vacation, and tried causes by common juries, and that the offices were kept open from August to October instead of being shut, do you think advantage would arise from it?—[*It was here explained that the offices were not closed during the Long Vacation.*] That would be beneficial to the public no doubt, because the business would be got through much more quickly; but I see no necessity for such a course, and I should be sorry to see it carried out, as the attornies require a vacation, as do also their clerks. Indeed, if I recollect right, there was formerly a sitting before term.

832. We believe that one Master remains in town during the Long Vacation?—Yes.

833. Are there many appeals from the Judges at Chambers to the Court in Banco?—Very few.

834. It is a very rare case?—A very rare case indeed; at the present moment I only recollect one in our office.

The witness withdrew.

Deputation from the Borough of Lancaster.

Samuel Gregson, Esq., M.P., William James Garnett, Esq., M.P., Richard Hinde, Esq., Mayor of Lancaster, and John Hall, Esq., Alderman of Lancaster, attended as a Deputation from the Borough of Lancaster.

835. (*To the Mayor of Lancaster.*)—We believe you have come before the Commission in order to state the views entertained by the town of Lancaster with regard to the idea of any change in the Assize Towns in the county?—I have.

836. Will you be so good as to state your views upon that matter?—I regret the absence of the Town Clerk who has been here for an interview with the Secretary, but is not now here with the Memorial; he came down at half-past 11 o'clock for the sake of an interview with the Secretary, why he is not here I am at a loss to know. This is a printed copy of the Memorial. (*Producing the same.*)

837. Will you be good enough in the meantime to state the views entertained at Lancaster upon the subject?—The views are general; we are anxious to increase if possible, the the Assize business; and I think it would be almost idle to lay before the Commision the advantages of the town and of the Court, they being as well known to yourselves as they are to any of us. We are not anxious to press any one particular point, but to take an enlarged view of the thing, and to ask you to take into your consideration as much as you possibly can the increasing of the Assizes. It is not for us to dictate: we have prepared a suggestion, whether rightly or wrongly, I know not, but, I think that the advantages of Lancaster as an Assize Town, and of its Courts, as compared with most other Courts are so very well known to to the Commission, that it would be quite idle on my part to attempt to elucidate those points.

838. Is there any particular mode in which you would suggest that the business of the Assizes at Lancaster could be increased with advantage to the public?—We have suggested a district, and there is a map with it, which the Town Clerk has.

(*Mr. Gregson.*)—Lancaster is stated in the Memorial as being the centre of a system of railways which diverge therefrom in various directions, as more particularly noticed hereafter; and having the county prison with Courts of Justice immediately connected therewith, equalled by none in the kingdom for general convenience, which is well known to some gentlemen on the Commission. Then the next point is that the smaller town of Lancaster possesses advantages over the populous town of Liverpool, for whilst sufficiently large to accommodate all witnesses and counsel, there is no loss of time or interruption of business which has been experienced elsewhere in consequence of the attractions of the docks and other places which do not exist at Lancaster. The locality of Lancaster is well known to several of the Judges here, that they cannot get far from the Court, they are always within reach. There are no attractions at Lancaster beyond the business which may be immediately going on in Court; there is nothing to be seen but to hover round the Court, there is no other attraction than the Court to draw away the attention of the jury-menor witnesses. That is their own boast at Lancaster; they say that these populous places are so attractive by the docks and other exhibitions that they do draw away the counsel and witnesses.

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839. Will you proceed with your suggestions?—Another suggestion is, that with the facilities for locomotion from every portion of the proposed district, Lancaster is within an hour and a half of the extreme points.

840. What district are you proposing; do you take in any part of any other county?—The district comprises a certain portion of Westmoreland and of Yorkshire.

841. You take in Craven?—Yes.

(*Mayor of Lancaster.*) "Those portions of the county of Westmoreland which lie within the County Court districts of Ambleside, Kendal, and Kirkby-Lonsdale, and those portions "of the county of York which lie within the county Court districts of Kirkby-Lonsdale, "Settle, and Clitheroe. And your memorialists believe that the inhabitants of the further "portion of Yorkshire comprised within the County Court district of Skipton would prefer "Lancaster to York, in consequence of the railway communication bstween that district and "Lancaster being direct, whilst that to York is broken and made much more inconvenient "by the change of railways, and the consequent detention at Leeds." I may add that there is a memorial from Settle, signed very largely, which ought to have been here also; and likewise another memorial which I was requested to present fron the Law Society of Lancaster.

842. You assume that Lancaster will continue to be the assize town, but suggest that there should be an additional venue or jurisdiction given to it?—Exactly.

843. Has it occurred to you to consider that by mooting the question of Westmoreland especially, you may be brought in peril of having Lancaster drawn to Kendal as the assize town?—We have heard it so stated, but we could hardly be brought to believe in the truth of such a fiction.

844. Is it proposed to bring any part of the hundred of Salford to Lancaster?—No. We do not go south beyond our present jurisdiction. We have not even taken Keighley and Skipton; and I believe that if the question of Leeds were out of the way Skipton would petition you also; but they look forward to having Leeds.

845. You say that there is a petition from Settle?—Yes; but we are in that unfortunate position that the Town Clerk has it.

846. How far have persons at Settle to go to their Assizes now?—To York.

847. How far is that?—Seventy miles at least. At present from a certain district of the County Court persons are sent to Lancaster Castle. They ought to go to York, but an arrangement has been made, and they come to Lancaster Castle. I beg to say that we have not the slightest wish to press the matter. We merely suggest the addition of Westmoreland, but if it did not meet your views we would take it out. It struck us that it looked well upon a view of the map.

848. Beyond what is contained in the memorial, have you any further suggestions to make to the Commission?—I am not aware that I have, except to ask your very earnest attention to the matter, not to pass us by as an old town. We have given accommodation to an immense amount of business, and are quite willing to do it again, and are anxious for it.

849. The memorial, a copy of which is before the Commissioners, conveys all your suggestions?—I believe so.

(*Mr. Gregson.*)—There is one point which I did not mention, that there has been a large expenditure from time time, in enlarging these Courts and extending the gaol, and making them very efficient for the public service, and furnishing suitable accommodation for the Judges.

The Deputation withdrew.

Deputation from the City of York.

Colonel John George Smyth, M.P., J. Procker Brown Westhead, Esq., M.P., The Right Honourable Edward Richard Anderson, Lord Mayor of York, James Meek, Esq., Alderman of York, Henry Richardson, Esq., Town Clerk of York, and George Leeman, Esq., Alderman of York, attended as a Deputation from the City of York.

850. (*To the Lord Mayor of York.*)—You have come before the Commission, we believe, in order to state your views as to any of those changes which have been suggested to us with regard to the Assize towns for Yorkshire. Will you be so good as to state what your views on the subject are?—As Lord Mayor of York, I have accompanied the deputation, and I do not intend to make any lengthened statement upon the subject, because the gentlemen whom I have the honour of addressing, I believe, are all already so well acquainted with the subject, and probably are so familiar with all the arguments *pro* and *con.* that any lengthened statement from me would be quite unnecessary. I do, however, believe that the Assizes for Yorkshire having been held from time immemorial at York Castle, no case has been out, or can possibly be made out, to justify their removal to Leeds or Wakefield or any other town. I may state that York Castle, where the Assizes are held, which includes the Courts of Justice and the County Prison was greatly enlarged and altered about 25 years ago, at an expense of, I may say, upwards of 150,200*l.*, from 150,000*l.* to 200,000*l.*, and I believe that the prison was made, both as regards the keeping of felons and the accommodation of debtors, as good and as perfect as any prison in the kingdom. This

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prison is visited, and is under the superintendence of the Magistrates of all three Ridings, the West, North, and East Ridings, and the very greatest care and pains are taken by them to have it conducted in the best possible way.

851. Does it act as a gaol for the whole county?—It acts as a gaol for the whole county.

852. Is it large enough for the convenience of the whole county?—Quite large enough; but there is a very large House of Correction at Wakefield, where parties are sent after they been sentenced to short or long terms of imprisonment.

853. There is another prison at Northallerton also?—Yes, but the one at Northallerton is merely for the Riding, and for sessions cases, and in the same way at Beverley. I may state that in times of commotion it is of very great advantage, at least it was always considered so in the county of York, which is a very large manufacturing county, especially the West Riding, to have the Assizes held in a place which is removed from any possibility of commotion, at a place, in fact, where very large bodies of men cannot be brought together, as they could be if the Assizes were held in the heart of the West Riding; and I may state that only as long ago as 1842, I believe, (Mr. Alderman Meek is here, who is a Magistrate of York, and he will state, if necessary, more at length what I am just going to allude to), there was a sort of Chartist commotion, and I believe something like 70 prisoners were committed to York Castle. There was a wish to liberate those prisoners, and meetings were held in the West Riding, and it was determined to have a large meeting on Knavesmire, which is at York. The intention was clearly expressed to liberate those prisoners from York Castle. Means were taken at York to frustrate the possibility of any such intention being carried out as liberating the prisoners. There was a meeting on Knavesmire, I believe, of not more than 8,000 people. If that meeting had been held in the West Riding, supposing these prisoners had been in a prison at Leeds, or within a mile of Leeds, it is reasonable to suppose, and I believe there can be no doubt of it, that instead of its being a meeting of 8,000 or 10,000, it would have been a meeting very likely of 60,000 or 70,000, and it would have been extremely difficult to deal with it. But the fact of having to come 25 or 30 miles, many of them on foot, prevented the possibility of it. That was only in 1842, and the circumstances will be more particularly alluded to by Mr. Alderman Meek, if this Commission wish to examine him upon the subject. We submit, also, that it is of very great advantage to have a large county out of which to select the Grand Jury, and also the Common Jury. I have had put into my hand this morning a resolution passed by the Chamber of Commerce at Leeds, wherein they use as an argument what appears to me to be perfectly fallacious on the subject of Juries. One of their arguments is in these words:—"The Council of Leeds Chamber of Commerce confidently submit that far more intelligent Juries would be selected from the inhabitants of Leeds than from a similar class in York, whereby the administration of justice would be served." Now, that is a perfect absurdity, because the Jurors for the York Assizes are selected from all the three Ridings. A Jury is selected for the first week, and then another for the second week, and so many persons are taken out of the West, North, and East Ridings there may or not be two or three Leeds men. There may, by possibility, be a York man, but certainly not a citizen, because a citizen would not be eligible in such a case to serve on the Jury; it must be a man selected from the county.

Colonel Smyth.—The City have Assizes of their own.

The Lord Mayor of York.—Then as to the costs of prosecutions. I understand that has been made a ground why the Assizes should be removed from York to Leeds. I submit that when it is taken into consideration that if the Assizes were removed from York to Leeds, there would have to be a very great outlay in Courts, and things of that description, and also there would be two Circuits instead of one, for the Judges would have to go there, and the Bar would be divided; the cost is really scarcely worth naming when the advantages which are given by railways are considered, so that in the course of an hour persons can go from York to Leeds, or from Leeds to York; and I submit that it can be shown beyond doubt (I will not attempt to go more at length into that subject) that as regards the question of cost, it is not worthy the name, and especially after the large expense which has been laid out upon York Castle to make it the strongest and most perfect prison in England, as I believe it is, at an expense of nearly 200,000*l*. As a matter of expense, if it were looked into, I believe the question would go the other way. As I said before, I do not pretend to lay before the Commissioners merely my own opinions, but it is extraordinary that in the West Riding an expression of opinion has never yet been able to be obtained from the magistrates of the West Riding itself in favour of the removal of the Assizes. It has been attempted more than once, but it has always signally failed. Colonel Smyth, who has kindly given us his company here to-day, will prove that on one occasion when he was present an attempt was made of that description, but it did not succeed. Again, in 1855, the Grand Jury at the York Assizes, composed of a far greater number of West Riding magistrates than from the North and East Ridings put together, passed a resolution that the removal was quite inexpedient; the subject had been then named. The like took place, I believe, at the very last March Assizes, the Grand Jury then being composed of West Riding Magistrates, exceeding in number those of the other two Ridings put together. They resolved that it was quite inexpedient. When this question was mooted, I believe, some two years ago, the corporation of York presented an address to the Queen against the removal of the Assizes from York to the West Riding, and that em-

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bodies generally the arguments (and conclusive ones, as we think,) against the removal of the Assizes. Every member of this commission has already had a copy of that address: It has at all events been laid before you. Wakefield wants to get the Assizes, and Leeds also wants to get the Assizes. We quite agree with the argument used by Wakefield, which is a strong argument, as they think, against Leeds having them—that it would be highly inexpedient indeed to take the Assizes to Leeds, only that the very argument which they use against Leeds is equally applicable to themselves, because it is in the very heart of the West Riding, where large bodies of people could be brought together. Then I may state, that if from time immemorial the Assizes have been held at York,—if by those means, I was going to say the very best bar ever got together in this country to attend any Circuit, was always on the Northern Circuit, I will not say the very best, but certainly equal to any other, I consider it a great misfortune that that bar should be divided and rendered less valuable, because nothing tends more to the complete administration of justice than a high and first-rate bar. If the Assizes were removed to Leeds, the inevitable result must be that the Bar would be divided, more or less. Then on the subject of time, I may say that we can lay before the Commission a statement, showing the arrival and departure of all the trains. The loss of time that is talked of in going to and coming from York is positively almost inappreciable. In every case trains arrive in time to be in York at nine o'clock, at the opening of the Courts, and they start late enough at night for every one to get home to Leeds, or any part of the West Riding, if he likes. But it will be observed that this really is a question entirely for Leeds or for Wakefield, though I consider that both are thoroughly out of the question; in fact, I think that the arguments which Wakefield uses cut away their case altogether; but so long as people have to start from home in any part of the county of York to come to York or to any other place, a distance of twenty or thirty miles additional makes no difference at all, and from Doncaster, Sheffield, Halifax, Huddersfield, and all these places, as they once have to leave home, the inconvenience, or even the loss of time, in coming to York instead of stopping at Leeds, is nominal, because they must all come to Normanton, or Knottingley, and then they make a circuitous turn back into Leeds, so that they might just as well come to York and return home from York, and they could do it as easily as from Leeds. It is, therefore, only the question that Leeds would like to have the Assizes. As to its being any real advantage to the rest of the county, there is in fact none, and I say again that this is a Leeds question, or a Wakefield question; the county of York does not move upon it; nobody from Sheffield, Doncaster, Huddersfield, Dewsbury, or any of these places, asks for it, and it is certainly of no service to any other town in the Riding than Leeds, even supposing I admit that it may be of some service to them. Again, the trains are so made that parties can return just as soon from York as if they only went half way. The trains are made for the whole distance, so that if parties stayed at Normanton or Milford Junction, they must stay for another train, and they could go just as easily the whole distance to York as half way. I will say one word on what, perhaps, Colonel Smyth will explain more clearly than I can, namely, the meetings which have been held upon this subject, showing that even the magistrates of the West Riding never could be induced to pass a resolution to take the Assizes from York. A large meeting was held, chiefly of North and East Riding magistrates. I think Lord Zetland was in the chair. This was about two years ago. Lord Fitzwilliam was there, and strong arguments were then shown (we can lay a report of the proceedings before the Commissioners) against any removal of the Assizes from York to Leeds, or Wakefield, or any other place.

854. Are we to understand you that the statements which you have now made to the Commission refer principally to the Criminal business of the County of York?—They probably refer to the Criminal business chiefly, but they refer to both Criminal and Civil business, and for this reason particularly;—as I have already said, from time immemorial the Assizes have been always held at York, but till within a few years a very great number of very small cases were tried at the Assizes, and I do think that then there might have been some argument used for having these very small cases tried in the West Riding. But by means of the County Courts these small cases do not now come to the Assizes at all, and actually the number of causes now tried at York Castle in the County are probably only one third of what they were. We can lay before you an exact statement of what they have been for a great number of years, if necessary.

855. We presume that the Civil Nisi Prius cases which are tried at York Assizes, although diminished in number, still of course are the principal causes arising in the County?—They are.

856. Do not the majority of those Civil cases which are tried at York arise in Leeds and Wakefield, and various other of the manufacturing towns?—I should say not the majority in Leeds or Wakefield; there are very few indeed out of Wakefield, there are some out of Leeds. But excepting those which actually arise in Leeds, I submit that the parties had much rather come to York to have them tried (because they must come from home to have them tried somewhere) than go to Leeds.

857. Why so?—They can get to York as easily and with a very little greater expense, and they can get back the same night, and the accommodation in York is altogether so completely superior, so much more comfortable, that the parties, I firmly believe, had much rather come to York than go to Leeds to try the cases.

858. Do you think that in the event, which we presume is a very common event, of a Case to be tried arising in the town of Leeds, the parties to that case would rather go to

York for the sake of that superior accommodation, than try the case at Leeds at their own door?—No, not when it is in Leeds. I excepted parties actually residing in Leeds. But it is infinitely better that those cases, if of importance, arising in Leeds, should be tried at York by a jury composed of jurors from the three Ridings, than at Leeds, where more or less there must be a feeling on one side or the other, and where it is difficult to get an indifferent jury.

859. Is the proportion of Civil cases tried at York which come from Leeds considerable?—I have not made any calculation, but there will be no doubt a good many cases from Leeds.

860. It has been stated this morning to this Commission by a professional gentleman that the expense and loss of time occasioned by taking cases from Manchester to be tried at Liverpool are so great that very often causes are abandoned rather than encounter that expense and that loss of time. Do you think that that feeling would exist as respects causes to be removed from Leeds to York?— Certainly not. I do not think it would make any difference whatever.

861. *Mr. Alderman Leeman.*—I hold in my hand the cause list of the West Riding for the last York Assizes, which I have just referred to, and out of 31 causes in that West Riding Cause List, I will undertake to say there are not six from Leeds. The extent of Civil business at the York Assizes has so diminished, that I can remember the time when each of the two learned Judges now present (Mr. Justice Cresswell and Mr. Baron Martin) held at the York Assizes double the number of briefs than there are now causes for the whole county. I may say that with regard to Civil business (supplementing what has just fallen from the Lord Mayor), I can well remember the time when the number of causes in one year at the York Assizes were not less than 250. I have known it above 300.

862. That is, for the two Assizes?—Yes, being myself a member of the legal profession, I have had as many as ten causes at one Assizes. Looking at the Cause List of the last York Assizes, when Mr. Baron Martin presided, there appear to have been only thirty-one causes from the West Riding, and ten from the North and East Ridings. I may say that the Civil business has diminished until it is scarcely worth the while of many gentlemen of the bar, who have attended our Northern Circuit, to come that Circuit.

863. What is the main cause of that, is it chiefly caused by the County Courts?—The County Courts have taken away a great number of the causes. But then there has been improvement in legislation in other respects, for instance, the improvement—for improvement it was—with reference to Bills of Exchange. I have known the York Assizes when undefended causes came on there, when judgments could not be obtained except by coming to the Assizes, where parties wanted time, and when the list of the undefended causes on a morning has been almost as many as we now actually have in one of the cause lists; so that as regards the Civil business at York, it is really diminished to an extent which, until an examination of the cause list takes place, honourable members of this Commission are probably not aware of. With regard to those causes, now the arrangements which are made for the accommodation of parties and witnesses are such that in that West Riding Cause List it will be observed there are several marked as Special Jury causes.

864. Only five?—Only five. With regard to those Special Jury causes they are always fixed for particular days, I am giving the experience of the York Assizes for twenty-five years. Such is now the facility by the telegraph arrangements, even to parties who have not Special Jury causes, that there is not the least difficulty in persons being telegraphed for over night. The agents in York watch the Assize Court; the parties and witnesses are telegraphed for over night, even in cases which are not Special Jury cases, and the amount of time which is now occupied on those causes is very much diminished from what it used to be. As regards Leeds itself, the causes from Leeds are not greater in proportion than from the rest of the West Riding. There are causes fully as important, and as many from Bradford, from Huddersfield, from Halifax, and from those other towns which are behind Leeds; and I know, from my own experience of the West Riding, into which I go once a week (I am a director of one of the largest banks in the county, which has branches both at Leeds, Bradford, Huddersfield, Pontefract, Doncaster, and Selby), I know from merchants, and from professional men, that there is no feeling in favour of the removal of the Assizes in respect of those causes down to Leeds; that if those parties have to leave home, they will as soon come to York as to Leeds. That certainly is the case with reference to causes at Sheffield, at Barnsley, and in the whole mineral district of the West Riding, inasmuch as persons starting off by the train from that district, when they have once arrived at Normanton and Knottingley, will almost and practically as soon get to York as to Leeds. With regard to Criminal business, as Clerk of the Peace for one of the Ridings, I know that the effect has been of the changes in the law as regards the Criminal business of the entire county. Whereas formerly we tried at York cases of sheep-stealing and horse-stealing, and all that class of cases which used to go to the Assizes, the great mass of those cases are now tried at the Quarter Sessions.

865. It was very strongly stated to this Commission by the persons who came up to support the change either to Wakefield or to Leeds, that such a very large proportion of the business of Yorkshire, arising in this manufacturing part of the West Riding, in the event of the Assizes being held at Wakefield or Leeds, witnesses and parties concerned would have a very much shorter distance to go than they now have in going to York; what force do you attach to that consideration?—I attach very little indeed, and I do it

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from this circumstance, that from every town behind Leeds and up to Todmorden, which is the frontier town between Lancashire and Yorkshire to York, the trains arrive in the morning at a quarter to nine. With regard to Civil business from all that part of the Riding, all the witnesses and parties can get to York in the morning before Court time. With regard to criminal business, such have been the arrangements that the Grand Jurors do not sit until ten o'clock in the morning, in order to enable parties to get from those distant towns. I may say that I had the honour last year to fill the office of President of the Yorkshire Law Society, at the meeting of which were present professional men from all parts of the county, and there was but one feeling at that meeting, that the expense would not be materially reduced, or so reduced as to render it worth while to effect a removal from York, the county town, to either of the other towns which have been spoken of. That was the expression (for I put it to the meeting, which was a very large meeting) by, I believe, the great mass of the professional men who were present. And I would wish to repeat to the Commission what I have stated, that I have heard this opinion from men of all grades and classes throughout the West Riding. I believe this movement not to have originated in any way in the towns of the West Riding apart from Leeds and Wakefield. Leeds, it is very true, has been at a very considerable expense in building a large Town-hall for itself, and the Town Council of Leeds, I have no doubt, would desire, for the purposes of their town itself, that they should have the Assizes there. Probably it may be said we are open to the same remark; that we are here from selfish motives, to preserve the Assizes to our own city. Still I am justified in saying that it is from no patriotism on the part of Leeds towards the rest of the Riding that they seek to remove the Assizes from York. And it is known that no stranger would dream of sleeping at Leeds if he could sleep out of it. At the Leeds West Riding Sessions the bar never dreamt of sleeping at Leeds if they could get to the Normanton Hotel or Harrogate. It is for that reason that I believe the general public would not desire to go to Leeds if they could. With regard to Wakefield, it is precisely the same. Wakefield is seeking unquestionably to get the Assizes to Wakefield, not for the benefit of the West Riding, but for their own advantage, and I would put it to you, whether you have ever had any expression of opinion from the Riding towns generally. I am sure, as my Lord Mayor has said, that is not the case at Sheffield, that is not the case at Doncaster; it is not the case in all that hive of towns where the minerals exist; and it is not the case as to the towns at the back of Leeds, up to the very borders of Yorkshire.

866. With regard to Bradford, Halifax, Huddersfield, Barnsley, or Sheffield, which would be the most convenient for either of those places: to have to try their questions at Leeds or Wakefield, or to have to try them at York?—If the question of convenience simply resolves itself into one of distance, I cannot answer you.

867. General convenience, of course, in the element of general convenience including expense?—Including expense. Then, if you will take the railway fare and the class of persons who travel down to the Assizes, the difference in the third class fare between travelling from Huddersfield, Sheffield, Barnsley, and other towns, down to Leeds, and from the same towns to York, at a penny per mile there and back again, it is infinitessimally small—it really amounts to nothing when you look at it as a practical question. I know, as Deputy Chairman of the North-eastern Railway, that the great mass of poorer people travel by third-class trains, and, practically, it would amount to very little indeed.

868. Do you suppose that there are many causes which originate in Leeds which are not tried now, owing to the inconvenience of having to come to York, and which would be tried if the Assizes were held at Leeds?—I do not believe a word of it. I am quite certain of the contrary, from my actual knowledge of Leeds, which I know pretty nearly as well as York, spending one day in a week there as a Bank Director.

869. What is the population of York?—About 40,000.

870. With reference to a Leeds or Wakefield cause: suppose that some Leeds or Wakefield merchant brings a cause, does it at all follow that his witnesses are Leeds or Wakefield people?—Not at all.

871. There is a petition here from Hull, and it is there stated that up to a very remote time there were Assizes held at Hull: do you know anything about that?—You are aware that up to very recently (I am not sure that it is altered now—I think it is altered by some recent Act of Parliament) it was necessary to procure a Writ of Habeas to remove the prisoners from Hull. Assizes were held at Hull, but I believe there was a change some fifty or sixty years ago, at the instance of the Hull people, who objected to pay the expense to which they were subjected—so I saw it stated in the debate. I only know it from what I have read of the debate which took place there.

872. *To Colonel Smyth.*—What is the feeling of the magistrates of Yorkshire generally with respect to the Assize town?—I am glad that you have asked me my opinion, because I was going to state, and I should wish the Commission to know, that the general feeling of the West Riding magistrates is very strongly opposed to any change. I have myself frequently been on Grand Juries at York. I was foreman of one, of which I have the list in my hand, eighteen magistrates out of twenty-two being West Riding magistrates. They came to a very strong resolution against any alteration of the place of holding the Assizes. The same resolution was come to, as I understood the Lord Mayor, at the last March Assizes; and I think I can go further than that, and say that I believe, generally speaking, the magistrates of the West Riding would look with apprehension upon any change,

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that they think there would be some prospect of disturbances, supposing the Assizes were held in riotous times at Wakefield or at Leeds. Living in the West Riding myself, and acting as a visiting magistrate of the House of Correction at Wakefield, I have perhaps a better opportunity of knowing the general feeling of the magistrates than those who have not had so much experience as I have had in the Riding; and I think I may say that, with the exception of those magistrates who may belong to Leeds, and perhaps those magistrates who may belong to Wakefield, the unanimous feeling would be against the trial of prisoners at Wakefield or at Leeds.

873. That applies, if we understand you correctly, to gentlemen residing in all parts of the West Riding?—In all parts of the West Riding, because I am in the habit of meeting them at Assizes and on other occasions, where there is an opportunity of consulting each other upon different points, and I have never heard an expression in favour of holding the Assizes either at Leeds or at Wakefield, except from one of the two towns, Leeds and Wakefield. The object of those towns is, as corporate towns, no doubt, to benefit the towns, and to bring grist to their mill, in fact; but the West Riding magistrates, if they were consulted as a body, would, I am convinced, express a very strong feeling against it.

874. When you refer to holding the Assizes at Leeds, or at Wakefield, are you contemplating an entire change of the Assizes from York to one of those places; or are you only contemplating that there should be an additional Assize held at one of those towns besides holding one at York, as now?—I am contemplating merely the removal of the West Riding business to Leeds or Wakefield, as I understand it to be proposed by those towns.

875. You contemplate an entire transfer for the West Riding?—I think the transfer of the West Riding business to Leeds or Wakefield would be attended with considerable danger to it, and would be very much against the feeling of the West Ridng magistrates as a body.

876. You think it better to go on as now, with the whole business of the County of York at York?—I have no hesitation in saying so. No witness need sleep in York now.

Mr. Alderman Leeman.—On the question of Criminal business, speaking of Leeds particularly, the case which has excited most interest at Leeds recently was the case of Dove for poison, who was executed at the last Assizes but one. In that very case there were a great number of witnesses; the case terminated at about half-past 10 at night; there was not one of those witnesses who was not at home in Leeds at 12 o'clock. There was a special train immediately put on by the Railway Company, the number justified it, and the persons were all at Leeds by the time I have mentioned.

Mr. Alderman Meek.—Will you just allow me to make a remark or two with reference to the Criminal feature of the business coming from the West Riding to York. I am old enough to recollect the frightful proceedings of the Luddites, and more particularly of the Chartists. As late as 1842 the Chartist mania broke out in a very frightful state, and a great number of prisoners were brought to York, being arrested for calling together fellow workmen, and instituting clubs for pulling out the plugs from the water-tanks of the mills and places where water was preserved, where they could not get the workmen to go with them, in order that the mills might be stopped. It turned out that York was placarded to the effect that, a number of Chartists would be all in York on the Sunday (this was in August 1842), in order to liberate the prisoners there confined. The magistrates of the City of York, and some of the West Riding magistrates, met together to take into consideration the best course to be adopted for the prevention of the rescue and liberation of those individuals. It so happened that General Brotherton had the command of that district with reference to the soldiery. The military troops, or rather the cavalry troops which we had had in York had been taken away from York, and we had no soldiery at all left. The result was that we had to send over to Leeds to get some military to York to defend us over the Sunday, apprehensive that the Chartists would come down in a great body to York and try to effect a rescue. I was appointed as a magistrate to go over there to see General Brotherton, and when I got there the General was up at Bradford or somewhere, along with the soldiery. I met the present Duke of Cambridge, then Prince George, who was with the Regiment in the Leeds Barracks; and his Royal Highness told me that they had no Cavalry to spare, but that they could let me have two Companies of the 32nd Regiment, and two Companies of that Regiment were brought over to York.

Colonel Smyth.—And some Yorkshire Hussars.

Mr. Alderman Meek.—Sir John Johnstone brought out his troop of Yorkshire Hussars, and another troop was also brought out by another Captain of a troop. The magistrates had to take the command of the military. On the Sunday there was a large assembly, of perhaps from 6,000 to 8,000 people. We had the soldiery all ready, and it is much better to be prepared for the worst as it prevents mischief. We had the soldiery out, and we were quite prepared for dispersing the mob if anything serious took place; but nothing very serious did take place, and consequently they had their meeting on Knavesmire, which is the racecourse, close to York. But it strikes me very forcibly, that whenever a circumstance of that kind does take place (that which has taken place may take place again), when individuals break out in the manner that the Luddites did and that the Chartists did, they are much better taken away from the district where the crime is committed to a distance, in order that they may be further from their fellow delinquents, and a rescue is much less probable than if it were at Leeds or at Wakefield, inasmuch as where they have

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20 or 30 miles to walk, it takes a little of the courage out of them, and of that feeling which otherwise might be brought to bear with reference to effecting a rescue. I think, in a criminal point of view, it is much safer for them to be taken to a distance, than to have them in the vicinity of the place where the emeute has broken out.

Colonel Smyth.—If you will allow me I will put in the Grand Jury list to which I have referred, where I happened to be the foreman; 18 of the 22 were West Riding magistrates, who passed a resolution in favour of keeping the Assizes at York.

877. Is that since the appointment of this Commission?—No, it was at the Assizes of 1855.

Lord Mayor of York.—This is the list of the Grand Jury at the Assizes in March last, which is since the appointment of the Commission, and this is a copy of their Resolution from the Minute Book of March last (*delivering in the same*). The Resolution is as follows: "That it is the opinion of the Grand Jury that the removal of any part of the Assizes from York, either to Wakefield or Leeds, would be unadvisable.

878. Does the same remark apply to this list, that a large proportion of these gentlemen belong to the West Riding?—Yes, a large proportion.

Colonel Smyth.—All that I have marked in the last list are West Riding magistrates, namely 12 out of 23. The town of Leeds was at the time which has been referred to in possession of the mob, upon the occasion to which Mr. Alderman Meek has alluded. I have no hesitation in saying that the prisoners at Leeds would have been released; the town was in possession of the mob until they got two Regiments of Infantry into the town.

Lord Mayor of York.—And our Cavalry were sent for; we lost our own Cavalry and had to get some soldiers from elsewhere.

The Deputation withdrew.

W. Dunne, Esq.

WILLIAM DUNNE, Esq., Town Clerk of Lancaster attended the Commission.

Mr. Dunne.—I am anxious to apologise for not being here at the proper time. I missed the deputation on my way from this place, where I had been in attendance to the Hotel, where they had previously assembled. I have the honour to present a memorial from the Corporation of Lancaster, and resolutions from a number of the inhabitants of the town, at a public meeting, a memorial from the Law Society of Lancaster, and one from the inhabitants of Settle. A map accompanies the memorial from the Corporation. It is spoken of as being annexed, but it was inconvenient to annex it.

The witness withdrew.

Adjourned to Saturday 13th June, at half-past 10 o'clock.

APPENDIX.

LETTERS AND DOCUMENTS.

Incorporated Law Society, U.K., Chancery Lane, London,
12th February 1857.

SUGGESTIONS of the COUNCIL of the INCORPORATED LAW SOCIETY as to INCREASE OF and ALTERATIONS IN the CIRCUITS, and the ALTERATION of the TERMS and SITTINGS in accordance therewith.

CONSIDERING the long interval of eight months between the Summer and Spring Circuits, it is submitted that there should be a third Circuit in every year throughout England and Wales for the trial of civil causes as well as criminal; and that the Terms should be reduced to three, and either Easter or Trinity Term abolished.

Each Term should be immediately followed by Nisi Prius Sittings in London and Westminster, and a Circuit should take place immediately after the termination of the Sittings.

This disposition of the Terms, Sittings, and Circuits might be so arranged as to leave a vacation in the autumn, immediately preceding Michaelmas Term, of about the same length as at present.

Each Term, and each Sittings after Term, should occupy about the same time as the present Terms and Sittings, and each Circuit occupy seven weeks, or thereabouts.

It is further submitted, that any addition to the Circuits, unless a Term intervene between each, would be of comparatively little utility in civil business, while it would entail great expense and inconvenience to the public and to the several counties.

It is further submitted, that it could be so arranged that one Judge should sit at Nisi Prius throughout the Term for the trial of Common Jury Causes; and this would, it is thought, allow of the Sittings after Term being shorter than at present.

It is further submitted, that as the length of time occupied by the various Circuits is very unequal, changes might be made in many of the Circuits so as to shorten them; but at present the Council are not prepared to enter into further details without more time for consideration of the subject, and further information.

The Council propose to submit to the Commissioners some further suggestions, and to enter into the consideration of the details, when they have ascertained the number of Causes tried at the several Assizes, and when they have obtained the other information the Council are seeking on the subject.

Examined,
R. MAUGHAM, Secretary.

BARON BRAMWELL'S ARRANGEMENT for TERMS and CIRCUITS.

RULE as to venue to be abolished, and (subject to a motion made by either party to change on special grounds) the plaintiff to be at liberty to change venue in all cases, local or transitory.

October 24th.—Nisi Prius sittings to commence in London, special juries first, then common juries, till finished.

Nisi Prius and Banc in Michaelmas Term, except as follows:—

No Nisi Prius in London in Term.

And every Monday and Thursday to be a day for which notice of trial may be given, except when they fall on the first or last day of Term.

Sittings after Term as usual.

The following Winter Circuits as a matter of course (no cases to be taken triable at Sessions):

Liverpool, civil and criminal, one Judge.
York, Durham, Newcastle, civil and criminal, two Judges.
Lincoln, Notts, Derby, Warwick, criminal, one Judge.
Stafford, Chester, Salop, Hereford, criminal, one Judge.
Oxford, Worcester, Glamorgan, Gloucester, criminal, one Judge.
Hants, Wilts, Devon (and civil), Somerset, criminal, one Judge.
Norfolk, Suffolk, Kent, Sussex, Essex, criminal, one Judge.

This would require eight Judges, but as there would have been special and common juries taken for a week in London, the London sittings after Term could be done by one Judge for each Court, and there would still be less time required than now, and so there would be more time for Middlesex, and less would be required for that than now, consequently one Judge for each would suffice, so that there would be four to attend Chambers and the Old Bailey.

The winter assizes might be so amalgamated as that Stafford, Chester, and Shrewsbury might try at Liverpool; Northampton, Notts, Derby, and Lincoln, at York; Cornwall and Somerset, at Devon; and the rest in London.

Hilary term, and the sittings after, as now.

Circuits as now, save that Rutland, Huntingdon, Hertford, and Westmoreland should be abolished, and their prisoners tried in adjoining counties. Hertford in London.

Montgomery and Merioneth should at least alternate.

Carnarvon and Beaumaris should be united, and Mold joined to Ruthin or Chester. Similar arrrangements should be made in South Wales.

The Surrey Assizes should be abolished.

The Home Circuit Judges should hold Nisi Prius sittings in London, with, perhaps, the North Wales Judge.

Easter Term as now.

A week's holiday.

Trinity Term a week earlier.

Sittings after Term as now.

Circuits as before.

Home and North Wales Circuit Judges to hold Nisi Prius sittings in London, beginning July 20th.

Nisi Prius, for debts, once a week in Long Vacation.

No case triable at Sessions to be heard at Assizes.

Copy Correspondence between the Council of the Incorporated Law Society and the Committees of several Provincial Law Societies.

To the Secretaries of Provincial Law Societies.

Incorporated Law Society, United Kingdom,
9th April 1857.

Dear Sir,

The Law Society of which you are Secretary is most probably aware that a Commission has been issued by Her Majesty, directing "inquiries into the present "arrangements for transacting the Judicial business, Civil and Criminal, of the Superior "Courts of Common Law in England and Wales, and also into the times and places at "which Assizes are holden, and as to the division of the country into Circuits."

The Council of the Incorporated Law Society have been requested by the Commissioners to offer any remarks or suggestions on the subjects and objects embraced in the Commission. They have therefore taken the same fully into consideration, and it appears to the Council that with a view to improve the despatch of business, and afford increased facilities and advantage to the country at large, the present unequal division of the year into Terms, Circuits, and Sittings in London and Middlesex, and the irregular periods at which those important arrangements take place, might be very advantageously changed, by reducing the number of Terms to three in the year, with Sittings in London and Westminster after each Term, and by making three Circuits; and the Council have accordingly made these suggestions to the Commissioners, coupled with the remark that any such changes will necessarily very materially affect the present arrangements in counties, such as the times of holding Sessions and other matters connected with the administration of the law; and on these points the fullest inquiries should be made from local parties before determining on the proposed alterations.

The Council have offered to communicate with the several country Law Societies on the subject, and obtain as far as possible their opinions on the points under consideration; and therefore they take the liberty of addressing you.

The reasons that have induced the Council to conclude that what they have ventured to propose would be most beneficial are principally the unequal division of the year between the two Circuits, the great length of time between the Summer and Spring Assizes, and the loss of time occasioned by the holding two Terms between the Spring and Summer Circuits. The present division of the year allows about four months between the Spring and Summer Circuits, and about eight months between the Summer and Spring, which both delays business and increases expense. And the closeness of the Easter and Trinity Terms to each other renders it barely possible to try any causes of importance.

Another reason which has weight with the Council is, the economy and advantage towards the transaction of Judicial business that would result from each Circuit being followed by a Term, and (correspondingly) from each Term being followed by Sittings in Town and by a Circuit.

If such changes were made as above suggested, it has appeared to the Council that the most convenient arrangement would be that the three Terms should each occupy about 26 or 27 days, and that the first Term should last from about 14th or 15th February to 13th or 14th March; the second from about the 26th May to 23rd or 24th June; and the third Term from the 1st November to the 26th or 27th November. Each Term would be immediately followed by Sittings in London and Middlesex, and the Circuits would take place immediately after the Sittings, and would begin about the 14th April, 23rd or 24th July, and 5th or 6th January respectively, and each would last from five to six weeks, and the present Winter Circuits for the trial exclusively of criminals would be discontinued, or (perhaps it may be said) would be changed to and merged in the Circuits which would begin for the trial both of Criminal and Civil business on the 5th January.

It is well known that the present Circuits are very unequal in length, the aggregate Assizes in some of the Circuits occupying only between three and four weeks, while the Assizes of another Circuit occupy seven or eight weeks. It has therefore appeared to the Council that a change in the number and length of the Circuits might be very beneficially arranged. It is also known that there are at present Assize towns where the business for the Assize is little or nothing; and it is considered to be probable that the small convenience afforded by the holding of the Assize in those towns by no means compensates for the expense and inconvenience occasioned by it to the country and to the Grand Jury and other officials, whose presence is required, however short or however unimportant be the business to be attended to.

Simultaneously, therefore, with the change in the number and length of the Circuits, it has appeared to the Council there might with advantage be a re-arrangement of the Assizes and Assize towns, by abolishing the holding of Assizes at some small Assize towns, and transferring their business to adjoining Circuits or Counties, by appointing additional Assizes to be held at large towns in populous districts, and by a new division of the Circuits, by which the length of each might be nearly equalized, and each made to extend over a period of about five or six weeks.

The holding of the Quarter Sessions and other county arrangements and appointments are dependent on or connected with the times and places of holding Assizes; and all these, with the position of the county prisons in reference to the Assize towns, should be fully considered by parties having local information, and their opinions obtained before any change be determined on.

The Council conceive it desirable they should put your Society in possession of the views they entertain, and of what it is understood the Commissioners have under consideration, and for this object the Council beg the favour of your Society considering the following points, and favouring the Council with the result:—

1st. The advantages (if any) to be gained by having three Circuits in the year instead of two. 2nd. The periods of the year at which, in such case, the Circuits should take place. 3rd. The discontinuing of Assizes at small towns with a view to transferring their business (if any) to adjoining counties. 4th. As to re-arrangements of the Assizes by appointing some to be held at various large towns, now without Assizes. 5th. The best means of arranging such changes with reference to the time of holding Quarter Sessions and other local arrangements. 6th. And as to the re-distribution of the Circuits and Assizes, either by increasing the number of Circuits throughout the country to seven or eight, or by merely re-distributing the Assize towns among the several Circuits, so as to equalize the length of each Circuit, and provide that the period occupied by each shall be of a period not less than five nor exceeding six weeks.

The Council will be particularly obliged by an early reply.

(Signed) R. MAUGHAM,
Secretary.

COMMISSION to inquire as to ASSIZES and CIRCUITS.

Newcastle-upon-Tyne, 25th April 1857.

THE Committee of the Newcastle and Gateshead Law Society have had under consideration your letter on the above subject, which requests, for the information of the Council of the Incorporated Law Society, to know the views entertained by our Society on the six several heads or propositions put before us.

In respect to the first and second of such propositions, our Committee considered that the suggestions contained in your letter presented a feasible view of the subject, and such as would be an improvement upon the present times of holding Circuits, and tend to an increase of Assize business.

In reference to the four remaining propositions, our Committee cannot help acceding to the proposition that large towns like Manchester and Leeds should have Assizes held there, but they consider it of great importance, in order to an equal distribution of Counsel, that this desideratum should be so arranged as to prevent an excessive accumulation of business in any one place, as is the case under present circumstances at Liverpool, where some of the more eminent of the Bar attend without going the whole Circuit.

The Committee are clearly of opinion that no alteration is requisite as to the Assize towns of Northumberland and Newcastle, or in the County of Durham. And with respect to the time of holding the Quarter Sessions, they think that the latter would not be interfered with by the proposed times of holding Assize Circuits in January, April, and July, but may be readily arranged to ensure a good attendance of the Bar, and making the Sessions precede the Assizes (as has latterly been the case) with a view of clearing off the minor class of Criminal cases. The October Quarter Sessions will occur at an equidistant period between the July and January Assizes.

While on the subject of holding Assizes, we may observe that the qualification of Special Jurors appears to require revision and extension, inasmuch as the last, under the new mode of summoning, is confined to a comparatively small number of jurors, whose attendance is consequently required more frequently than would be the case under an amended system.

(Signed) WILLIAM CRIGHTON, JAS. RADFORD, } Secretaries.

NEWCASTLE AND GATESHEAD LAW SOCIETY.

Newcastle-upon-Tyne, 30th April 1857.

WHILE upon the subject of the Assizes, as to which we had the honour of addressing you on the 25th inst., in reply to your official circular, we may take this opportunity of referring to the extreme inconvenience which the profession, and every one having business at the Assizes here, have to sustain by reason of the separate jurisdictions of the county of Northumberland and the town and county of Newcastle-upon-Tyne, and the awkward complication of business which is thereby occasioned. Between the Guildhall of Newcastle and the Moot Hall of Northumberland, which are in different parts of the town, and widely distant from each other, there is, as an eminent Counsel aptly said, "a great gulf fixed," and after the trial of the town prisoners the Judge sitting for Newcastle usually adjourns his Court from the Town Hall of Newcastle to the Moot Hall for Northumberland, and resumes his functions in the Nisi Prius or Crown Court of the latter building, whichever happens to be disengaged, followed by counsel learned in the law, attornies, jurors, witnesses, marshals, criers, clerks, sheriff, under-sheriff, bailiffs, tipstaffs, and all the attendant satellites incident to an Assize Circuit. This causes, of course, a great stir and movement, attended with the loss of much valuable time, and no small inconvenience and confusion to all whom it may concern. At a late Assize, one of the learned Judges of Assize, after removing from the Borough Court of Newcastle to the Nisi Prius Court for Northumberland, finding the latter cold and comfortless, forthwith re-adjourned to the snugger Borough Court, to which he straightway descended, attended by his numerous and bewildered followers above enumerated, and there sat during the remainder of the Assize, and there he tried town and county causes promiscuously and indiscriminately. It is impossible for a plaintiff's attorney to know, when he enters his cause for town or county, in which Court it will be tried, or in what order it will be taken, so uniform and invariable is the confusion which prevails. The Jury Lists are separate, and the Cause Lists separate, the Court in which a cause may be taken and the day on which it will be tried, alike unknown and uncertain; and instances have occurred of a county cause being tried at the Guildhall for the Borough, while the attorney for the defence and his witnesses were in waiting at the Moot Hall for the county, without knowing, or having the means of knowing, in which of the two Courts it would be tried, or that it would be taken that day, or that it was, in fact, being heard in his absence in the other Court. Any and every member of the Northern Bar can testify to the extreme annoyances attendant upon the present system; and if there be other Assize towns

similarly situated, a like cause of complaint may possibly exist, and a general remedy may be considered.

We believe the Bench, the Bar, the Attornies, and the public will concur in advocating and praying for a change in these monstrous and inconvenient arrangements, or want of arrangements, which have so long rendered a Northumberland and Newcastle Assize a scandal to the Northern Circuit, and a positive annoyance to every one unfortunate enough to attend it, in whatever capacity.

(Signed) WILLIAM CRIGHTON, JAS. RADFORD, } Secretaries.

Lancaster, 22nd April 1857.

THE Lancaster Law Society have had under consideration your letter of the 9th instant, on the subject and objects of Her Majesty's Commission for inquiring into the present arrangements for transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales, and also into the times and places at which Assizes are holden, and as to the division of the country into Circuits.

In the reasons and policy which have induced the Council of the Incorporated Law Society to propose to the Commissioners the reduction of the Legal Terms to three in the year, each Term being followed by Sittings in Town, and by Circuits in the Country, the Lancaster Law Society fully concur; and the members were unanimous in their resolution that the details involved in the proposition might be most advantageously left for adjustment in the hands of the Council.

But with regard to the re-arrangement of the Circuits, and the towns to be appointed at which the Assizes may, with the greatest advantage, be holden, as respects their own particular locality the Lancaster Law Society have several points to urge.

Prior to the year 1835 the Assizes for the whole County Palatine of Lancaster were, and from time immemorial had been, held at Lancaster. For reasons which now no longer apply, the Assize business of the southern division of the county was by an Order in Council in that year removed to Liverpool. Lancaster had then no railway or telegraphic communication with any part of the county; *now* it possesses both on all sides of it, while the accommodation for the due reception of the Judges and their suites, and the Courts and Offices for the transaction of the Assize business are at once the most convenient and commodious in the kingdom.

The personal experience of the members of the Lancaster Law Society, confirmed as it is by that of other members of the profession in other localities, establishes in their minds the truth that a moderate sized town, like Lancaster, while it presents ample accommodation for all who have need to resort to the Assize town, does not produce the many inconveniences which arise in a town of large extent, like that of Liverpool. Among these inconveniences may be enumerated the difficulty of keeping together witnesses who in a large town are continually attracted from their necessary attendance in Court by objects of interest, the wide area over which the lodgings of the members of the Bar are scattered, and the consequent labour and time in delivering briefs, appointing and attending consultations, &c., the distance from the Courts at which fitting accommodation for the humbler class of witnesses, always the most difficult to control, is to be had—these, and many other practical inconveniences, which will readily suggest themselves, arising from the size and character of the place where an Assize is being held, are of the first importance in considering the eligibility of any place as an Assize town. The rapid and economical communication by railway has certainly introduced a new feature of eligibility (as places for holding Assizes) to many towns of moderate size, and to none more than to Lancaster, upon which, as a common centre, many lines of railway converge.

These considerations, and the local knowledge which the Lancaster Law Society possess, induce them to urge strongly upon the Council of the Incorporated Law Society the eligibility of Lancaster as a very convenient and central place for a new and enlarged Assize district. They propose that the Assize business for that part of the County Palatine which is now transacted at Lancaster should still be continued there; this consists of the hundreds of Blackburn, Leyland, Amounderness, and Lonsdale North and South of the Sands, all of which, except Lonsdale North of the Sands, find ready and immediate access to Lancaster by the Lancaster and Preston Railway; and the parts of those hundreds the most remote from Lancaster are not distant more than an hour and a half's journey. The hundred of Lonsdale North of the Sands, in which the town of Ulverstone is situate, will, in July next, be within an hour's journey to Lancaster by the opening of the Ulverstone and Lancaster Railway. These are the portions of the County Palatine at present transacting their Assize business at Lancaster.

The Lancaster Law Society believe that great public advantage and convenience would result if the following County Court divisions were added to the Lancaster Assize district,

and in enumerating they take the liberty of pointing out the ready access which these districts now have to Lancaster:—

Name of County Court District.	Time of Journey.	Means of Access to Lancaster.
	H. M.	
Ambleside - - - - -	1 30	Kendal and Windermere and Lancaster and Carlisle Railways.
Kendal - - - - -	0 45	Lancaster and Carlisle Railway.
Kirkby Lonsdale - - -	1 0	Lancaster and Carlisle and North-western Railways.
Settle - - - - -	0 45	North-western Railway.
Skipton - - - - -	1 30	
Keighley - - - -	1 50	Leeds and Bradford Extension and North-western Railways.
Such part of the Clitheroe district as is in Yorkshire -	1 30	North-western Railway.

The district thus pointed out is, for the most part, but thinly inhabited by a purely agricultural population, and notwithstanding the great apparent area of country embraced in it, would not create any very important addition to the Assize business already transacted at Lancaster.

An accompanying map will clearly establish the central situation of Lancaster for this district, and the ready mode in which this arrangement would serve that part of Yorkshire in which the towns of Sedbergh, Settle, Skipton, and Keighley are situated, in comparison with the present distance from and means of access to York; and it is believed that other of the County Court districts in Yorkshire, traversed by the Leeds and Bradford Extension Railway, would find a greater convenience in transacting their Assize business at Lancaster, with which they have direct railway communication, than at York, which is more distant, and with which the railway communication is less direct.

(Signed) L. HOLDEN,
Secretary, Lancaster Law Library.

Preston, 1st May 1857.

I DULY received your circular as to inquiries "into the present arrangements for "transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common "Law in England and Wales, and also into the times and places at which Assizes are "holden, and as to the division of the country into Circuits;" and having first submitted it for the perusal and consideration of several solicitors, I called a meeting of the members of the Preston Law Society (and invited the attendance of many other solicitors here), at which I was instructed to inform you that,—

The great delay which takes place between the issuing of the writ in a Superior Court and the trial at the Assizes, has long been felt and much complained of. It is considered very detrimental to the interests of the commercial community, and in numberless instances parties have preferred resorting to inferior tribunals where Courts are frequently held, rather than wait for the Assizes (which as now held may not take place for several months), or incur the expense of a trial in London. They conceive it is desirable to have at least three Circuits in the year for the transaction of Civil business in populous districts, such as in Lancashire, Yorkshire, &c.; in fact such a measure appears absolutely indispensable to meet the present requirements of the public, if they are to have the advantage of decisions of the Judges of the Superior Courts and the services of an efficient Bar. It is also considered that if more frequent Assizes were held, the length of time occupied before verdict would not, in many cases, be so great as at present, and consequently the expense of a trial there would be much diminished.

2nd. That the periods of the year at which the Circuits should take place, should, in their opinion, be as nearly equidistant as may be.

3rd. That it is advisable to discontinue holding Assizes at small towns (except perhaps at such towns as Lancaster where the county gaol is situated), and to transfer the business to other places in the same county.

4th. That it is desirable to re-arrange the Assizes by appointing same to be held at various large towns (Manchester, for instance) now without Assizes.

5th. That two out of the three periods suggested for the commencement of the Circuits may interfere with the Quarter Sessions, which commence in the first week after the 28th December and 31st March, and in this county last three weeks.

(Signed) WM. WALKER RILEY,
Hon. Sec., Preston Law Society.

Hull Law Society.

At a special general meeting of this Society, held on the 20th day of April 1857,

Read Circular of the 9th inst., addressed to the Secretary by Mr. Maugham, the Secretary of the Incorporated Law Society, seeking the opinion of this Society on several points now under consideration by the Commission of Inquiry into the present arrangements for transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common Law, and also into the times and places at which Assizes are holden, and as to the division of the country into Circuits.

Resolved, that in the opinion of this Society it is expedient—

1. That instead of the present arrangements there should be, as suggested, three Terms, to be followed by Sittings in London and Westminster, and three Circuits in each year.
2. That the periods of the year in which the Circuits should take place be those suggested in the Incorporated Law Society's Circular, with the exception of the July Circuit, which on account of the harvest ought not to commence later than the first week in July.
3. That for the better re-distribution of the Circuits it is desirable to discontinue the Assizes at small towns, and transfer their business to neighbouring or other places.
4. That Hull, where Assizes were formerly held, should again become an Assize town, as the third port in the kingdom, and the centre, and by far the most populous town, of a district comprising the East Riding of Yorkshire, and the parts of Lindsey in Lincolnshire, and possessing railway communications in all directions.
5. That the above arrangements, if adopted, would not materially interfere with the present periods of holding Quarter Sessions, and other local arrangements.
6. That for effecting the proposed changes no increase of the number of Circuits would be necessary, but that every needful purpose might be allowed by re-distributing the Assize towns among the several Circuits, so as to equalize the length of each, and provide that the period occupied by each shall not exceed five or six weeks.

Surrey Law Society.

In answer to your letter of the 9th ultimo, I beg to inform you the Surrey Law Society have given it their best consideration, and I beg to communicate to you the opinion which they have formed.

1. They think, for the reasons stated by the Council of the Incorporated Law Society, that it would be advantageous to reduce the number of Terms to three in the year, with Sittings in London and Westminster in and after each Term, the latter to commence at and last for the periods suggested by the Council; but inasmuch as the termination of some of the Assizes will approximate closely to the next Term, more than four days should be allowed for the application for new trials, &c.
2. That three Circuits in the year instead of two, commencing at the times and lasting for the periods suggested by the Council, we believe would be convenient and advantageous to the country at large and would not interfere with the times fixed by law for holding Quarter Sessions.
3. That whether it would be desirable to remove the Assizes from the towns where they are now holden must depend upon the position of those towns in the counties in which they are respectively situate, rather than upon the size of the towns, provided they are sufficiently large to afford the necessary accommodation; and in counties where there are large towns, such as Manchester, Leeds, and Birmingham, it may be desirable to hold the Assizes at more than one place in the same county on the same Circuit, but they think it would be very undesirable that the jurymen, suitors, prosecutors, and witnesses of one county (with perhaps a very few exceptions) should be compelled to resort to another county. That as a general rule there should be an Assize in every county, and that the exception should only be where there are two small contiguous counties, and then the Assizes might be holden alternately, in such counties, at the towns most convenient to the two, so that, though suitors and prosecutors in one county migh have their causes tried in another, it should be by juries of the county in which they are heard, and the shrievalty business would not then be disturbed. That the re-arrangement of the Assizes should be effected by a redistribution of counties, and not by throwing parts of one county into another, and the increase of the number of Circuits might thereby be avoided though the business of the various Circuits might be more equally distributed; or if the number of Circuits were increased, then perhaps, in some one or two instances, one Judge might be found able to dispose of both the Civil and Criminal business. That in some

counties the places of holding the Assizes might be varied, as, for instance, in Surrey, the January Assize might be holden at Kingston, the April Assize at Croydon, and the July Assize at Guildford, at which towns Assizes are now holden. Every part of the country would thus be accommodated in its turn with great advantage, as both special and common jurymen might then be summoned to attend within a moderate distance of their own houses.

It is also suggested whether it might not be expedient, as well as just, that common jurymen should be paid to the extent of five shillings each, to be distributed among the panel in both Civil and Criminal cases, instead of being, as now, paid only eightpence in Civil cases and nothing in Criminal, and that some means should be adopted to ensure proper accommodation at the Assize towns in respect of Courts and Judges' lodgings.

(Signed) CHARLES J. ABBOTT,
Honorary Secretary.

New Inn, 20th May 1857.

PLYMOUTH LAW SOCIETY (established A.D. 1815.)

Plymouth, 4th May 1857.

I AM directed by the Committee of this Society to communicate with you in answer to yours of the 9th ultimo, relative to the proposed change of Circuits and Terms, and to express their full approval of the suggestion that the three Terms should occupy about twenty-six or twenty-seven days each, and of the periods at which they should commence and terminate. They also think with you, that the Terms should immediately follow the Circuits, and that the present Winter Circuits for the trial of prisoners should be discontinued.

Here our special grievance is, that for trials we are obliged to go either to Bodmin, thirty miles off, or to Exeter, fifty miles. That this is unreasonable is patent, from the fact that Plymouth, Stonehouse, and Devenport, all in fact one large town, with 120,000 inhabitants, is obliged to have its trials conducted and its inhabitants summoned as jurymen to a place not containing above 55,000, or Bodmin with only 3,000 or 4,000 inhabitants. This being the meeting point of the South Devon, Tavistock, and Cornwall lines of rail, might be conveniently made an Assize town for a large and rapidly increasing district, caused by this port being the largest west of Bristol. The Committee would also suggest that Truro would be a fitter place than Bodmin for Assizes, as being the centre of a much more populous district.

(Signed) SAMUEL CATER,
Honorary Secretary.

DEVON AND EXETER.

AT a meeting of the Devon and Exeter Law Association held at the Law Library, Exeter, on Monday the 20th of April 1857;

Mr. J. H. Terrell in the chair;

Mr. Maugham's letter of the 9th April, with regard to Assize arrangements in England, having been read, it was resolved that the following answers be given to the questions contained in such letter.

1. The business of the Western Circuit has so diminished of late years by the withdrawal of business to the County Courts, and the facilities of trying pressing personal actions in London, have been so increased by railway communication and other means, that this Association considers that no advantage would be gained in this part of England by having three Circuits instead of two.
2. The Association, however, think that the interval between the Summer and Spring Assizes is far too long, and they therefore suggest that the Spring Assize should be held a fortnight earlier than at present, and the Summer Assize a fortnight later. This arrangement would also tend to shorten the Long Vacation, the length of which is inconvenient to the public, and causes too great an interruption to the occupation and emoluments of both branches of the profession, and especially its less wealthy members.
3. Exeter is the county town of Devonshire, and is in the most central situation, and the County Gaol adjoins the city, so that this Association has no alteration to propose on this point.
4. An Assize for the trial of causes might perhaps be advantageously held at Plymouth.
5. If the periods for holding the Assizes should be altered, the Sessions might be readily re-arranged by the magistrates under their present powers, or new powers to be granted for the purpose.
6. This question may be of importance to the larger Circuits, but does not appear to affect the Western.

Further Communication from the Incorporated Law Society.

Incorporated Law Society, U.K., Chancery Lane, London,
Sir, 25th June 1857.

I am directed by the Council of the Incorporated Law Soociety to inform you that, from the experience they have in the business of many of their own offices, and from the communications they have received from other attorneys, it appears that great loss of time and much inconvenience is sustained by the limited (and, in respect of time, uncertain) attendance at Chambers of the Judges of the Superior Common Law Courts, especially during Term time, and when some of the Judges are engaged in the trial of causes in London and Middlesex, and also by the late hour of the day at which, during Term, that attendance usually takes place.

The Council beg most respectfully to submit, to the Commissioners on the Judicial Business of the Courts, that improved arrangements should be made for the despatch of this important branch of business.

I have &c.
(Signed) R. Maugham,
Secretary.

W. H. Walton, Esq., Secretary,
Common Law Judicial Business Commission.

Further Suggestions of the Council of the Incorporated Law Society.

In carrying into effect the proposed changes in the Terms, Sittings, and Circuits the Council adhere to the changes proposed by their former suggestions, with some slight alterations as stated below.

It is proposed that *Michaelmas* Term begin on the 1st November and continue till the 27th November, and that the Sittings in London and Middlesex after that Term commence as at present immediately after Term, and continue until the day before Christmas day.

That the *First Circuit* commence on or about the 6th January, and be continued till the middle of February.

That *Hilary* Term commence about the 14th or 15th of February, and continue till the 13th or 14th of March.

That the Sittings in London and Middlesex then take place and continue, if necessary, till the 13th or 14th of April.

That the *Second Circuit* be held from the 14th April to about the 24th or 25th of May.

That *Easter* Term be abolished and *Trinity* Term commence on the 25th or 26th of May, and continue till the 22d or 24th of June.

That the Sittings in London and Middlesex be held from the 23rd or 25th of June to the 20th or 22nd of July.

That the *Third* or Summer *Circuit* commence on the 23rd or 24th of July, and continue to the end of August,

Undefended and Common Jury Clauses might be tried in Term time.

Thus the Sittings in London and Middlesex will follow immediately after each Term and be succeeded by the Circuits.

Each of the three Terms will occupy nearly four weeks, each of the Nisi Prius Sittings a little under four weeks, and each Circuit about six weeks, leaving about eight weeks for Holidays in the Long Vacation and a fortnight at Christmas.

The two days on either side of Easter Sunday now usually excepted from Easter Term would according to the above arrangement always fall out of Term, and none of them, or at most only Good Friday, need be excepted from business.

The accompanying Calendar will show more particularly the effect of these alterations.

The above changes should be accompanied, as before suggested by the Council, by considerable alterations in the divisions of the Circuits.

	Weeks.
Three Terms, 4 weeks each	12
Three Sittings, 4 weeks each	12
Three Circuits, 6 weeks each	18
Vacation Christmas, 2 weeks	2
Long Vacation	8
Weeks	52

In making these suggestions, the Council take the liberty of pointing out that the contemplated changes will very materially affect local arrangements throughout the country, such as the times of holding Sessions and other matters connected with the administration of law, on all of which the Council submit the fullest inquiries should be made from local parties, before determining on the proposed alterations. With this view, the Council will, if desired, be happy to communicate with the several Country Law Societies on the subject, and obtain as far as possible their opinions on the points under consideration.

Examined,
R. Maugham, Secretary.

PRESENT ARRANGEMENT of TWO CIRCUITS in the Year, at unequal Intervals, with a SPECIAL WINTER COMMISSION, contrasted with the proposed Arrangement for Two Circuits *only*, equidistant one from the other.

TOWNS.	Present Assizes and Prisoners.	Number of Prisoners at each Assize if the Year be equally divided.	REMARKS.
	Prisoners.	Prisoners.	
WARWICK	Spring Circuit, 21st March - - 93	Spring Circuit, say 20th January - 88	55 prisoners, committed after the 20th January, and who, under the present arrangement, would be tried in March following, will, under the proposed arrangement, be kept in gaol until the 20th July—17 weeks longer.
	Summer „ 25th July - - 54	Summer „ 20th July - - - 109	74 prisoners committed after the 20th July, and who, under the present arrangement would be tried in December, will be kept in gaol until the 2th January—6 weeks longer.
	Winter „ 10th December - 50	- - - - - - - - -	40 prisoners committed after the 10th December will have 8½ weeks *less* imprisonment.
LIVERPOOL	Spring „ 21st March - - 116	Spring „ 27th January - 177	60 prisoners committed after the 27th January will have 18 weeks longer.
	Summer „ 21st August - - 174	Summer „ 27th July - - - 227	150 „ „ „ 27th July „ 7 „ „
	Winter „ 10th December - 114	- - - - - - - - -	56 „ „ „ 10th December „ 7½ „ *less.*
YORK	Spring „ 9th March - - 74	Spring „ 13th January - 142	48 prisoners committed after the 13th January will have 18 weeks longer.
	Summer „ 8th August - - 76	Summer „ 13th July - - - 121	108 „ „ „ 13th July „ 5 „ „
	Winter „ 10th December - 113	- - - - - - - - -	30 „ „ „ 10th December „ 8 „ *less.*
STAFFORD	Spring „ 13th March - - 86	Spring „ 20th January - 108	49 prisoners committed after the 20th January will have 18 weeks longer.
	Summer „ 20th July - - 65	Summer „ 20th July - - - 112	86 „ „ „ 20th July „ 6 „ „
	Winter „ 10th December - 69	- - - - - - - - -	46 „ „ „ 10th December „ 7½ „ *less.*
HANTS	Spring „ 2nd March - - 59	Spring „ 27th January - 91	25 prisoners committed after the 27th January will have 21 weeks longer.
	Summer „ 18th July - - 43	Summer „ 27th July - - - 67	63 „ „ „ 27th July „ 7 „ „
	Winter „ 10th December - 56	- - - - - - -	35 „ „ „ 10th December „ 5 „ *less.*

The above Table will show, that if two equidistant Assizes, and *no* Winter Gaol Delivery be established, the amount of additional imprisonment imposed upon the prisoners in the five towns mentioned, prior to being tried, will equal altogether 345 prisoners being kept in gaol 21 weeks each.

Deducting from this the imprisonment *saved* to other prisoners, amounting altogether to 72 prisoners, at 21 weeks each, the final result is, that by the proposed change 273 prisoners will each have 21 weeks, longer imprisonment.

Proposed Winter Circuits for Civil and Criminal Cases.

Home Circuit.

Essex	30 prisoners	1 Judge	4 days.	
Kent	24 „	„	3 „	
Sussex	20 „	„	3 „	
Surrey	9 „	„	2 „	
		Total	12 „	

Western Circuit.

Wilts	20 prisoners	1 Judge	2 days.	
Hants	56 „	„	5 „	
Somerset	13 „	„	2 „	
Devon	25 „	„	4 „	
		Total	13 „	

Midland Circuit.

Northampton	18	1 Judge	2 days.	
Lincoln	11	1 „	2 „	
Nottingham	27	1 „	3 „	
Derby	25	1 „	3 „	
Warwick	50 (civil and criminal)	2 „	5 „	
		Total	15 „	

North Wales Circuit.

Chester	32 (civil and criminal)	2 Judges	4 days.	20

South Wales Circuit.

Glamorgan, and part of Northern Circuit	13	1 Judge	2 days.	20
Liverpool	114 (civil and criminal)	2 Judges	14 „	

Northern Circuit.

Durham	59	„	4 days.	21
Newcastle	28	„	3 „	
York	113 (civil and criminal)	„	14 „	

Oxford Circuit.

Oxford	19 prisoners	1 Judge	3 days.	3
Worcester	22 „	1 „	3 „	
Stafford	69 (civil and criminal)	2 „	7 „	
Shropshire	7	1 „	2 „	3
Hereford	13	1 „	3 „	
Gloucester	26 (civil and criminal)	2 „	4 „	
		Total	17 „	

Home Circuit	1 Judge	12 days.
Western „	1 „	13 „
Midland „	1 „	15 „
	1 „	5 „
North and South Wales Circuit	1 „	20 „
	1 „	18 „
Northern Circuit	2 „	each 21 „
Oxford Circuit	1 „	16 „
	1 „	17 „

Ten Judges required for Winter Circuits.

Comparative Expenses of Witnesses on Trials when living in an Assize Town, and at a Distance.

Estimated Expenses of Ten Witnesses and Attorney, residing in an Assize Town, five days in attendance.	£	s.	d.
1 Banker (with subpœna)	1	1	0
If more than one day, some small allowance, 5s. a day	1	0	0
1 Merchant (with subpœna)	1	1	0
„ (allowance)	1	0	0
1 Engineer or Surveyor, at 1 guinea	5	5	0
1 Professional Man, ditto	5	5	0
1 Innkeeper, at 10s.	2	10	0
1 Master Tradesman, at 10s.	2	10	0
1 Attorney's Clerk, at 10s. 6d.	2	12	6
1 Journeyman, at 5s.	1	5	0
1 Ditto ditto	1	5	0
1 Labourer ditto	1	5	0
£	25	19	6
Attorney, 4 days at 13s. 4d., one day at 1 guinea, (on long cause 2 guineas, 4l. 15s.)*	3	14	4
£	29	13	10
*Long Cause	1	1	0
£	30	14	10

Ditto, when Attorney and Witnesses reside at a distance of 30 Miles; Railway Fares as below.	£	s.	d.	Rail. £	s.	d.
Ditto, at 1 guinea	5	5	0	0	11	0
Ditto, at 1 guinea	5	5	0	0	11	0
Ditto, at 2 guineas	10	10	0	0	11	0
Ditto, at 2 to 3 guineas (say 2 guineas)	10	10	0	0	11	0
Ditto, at 15s. each day	3	15	0	0	8	0
Ditto, at 15s. to 1 guinea (say 15s.)	3	15	0	0	8	0
Ditto, at 15s. to 1 guinea (say 15s.)	3	15	0	0	8	0
Ditto, at 7s. 6d.	1	17	6	0	8	0
Ditto, ditto	1	17	6	0	8	0
Ditto, at 5s.	1	5	0	0	8	0
£	47	15	0	4	12	0
Rail	4	12	0			
Attorney, 5 days at 3 guineas, deducting 1 guinea for attendances, not allowed when 3 guineas the day are charged	14	14	0			
Rail	0	11	0			
£	67	12	0			

Ditto, when Attorney and Witnesses reside 200 Miles from place of Trial, and Railway Fares as below.	£	s.	d.	Rail. £	s.	d.
Cost of 10 witnesses, as before	47	15	0			
4 First-class fares, at 2l. each way	-	-	-	16	0	0*
6 Second-class ditto, at 1l. 10s. each way	-	-	-	18	0	0*
Attorney as before	14	14	0			
Railway fare	-	-	-	4	0	0
£	62	9	0	38	0	0
Rail	38	0	0			
*£	100	9	0			
*If cause conducted by a Town Agent, deduct Country Attorney's allowances	18	14	0			
£	81	15	0			
And add 4 days, as in first case, or 4l. 15s. if a long cause*	3	14	4			
1 guinea for attendances	1	1	0			
£	86	10	4			
*Long cause	1	1	0			
£	87	11	4			

*Add to this some allowance for cabs, &c.

Letter from Mr. Shuttleworth, Clerk of the Crown for the County Palatine of Lancaster, respecting the Advisability of Manchester being made an Assize Town.

My Dear Sir, Preston, 15th May 1857.

I have to acknowledge the receipt of your letter of the 29th April last, in which you request me to furnish the Commissioners with my views on the subject of a proposed separate Assize at Manchester for the trial of all cases, both civil and criminal, from the Hundred of Salford, especial regard being had to the reduction in the expenses of prosecutions likely to be effected by the adoption of such a measure.

To enable me the better to comply with this request, I have caused two tabular statements to be prepared, which I enclose. The statement (No. 1.) shows the number of criminal cases for trial at the Liverpool Assizes during the years 1854, 1855, and 1856, distinguishing those from the City of Manchester, those from the remainder of the Hundred of Salford, and those from the Hundred of West Derby and other parts of the county; and it shows also the sums allowed to witnesses in the Manchester cases, and the allowances which would have been made to them if those Assizes had been held in Manchester. These last-mentioned allowances have been ascertained by deducting the whole of the travelling expenses of the Manchester witnesses and one-half of their other allowances, in accordance with the usual practice of granting to witnesses residing in the Assize town one half only of the ordinary allowances made to other witnesses.

The statement (No. 2.) shows the number of bills of costs taxed at the Liverpool Assizes during the above-mentioned period of three years in criminal cases from the City of Manchester, and also in those from the Borough of Liverpool, with the aggregate amount of the allowances made on taxation.

The total saving as regards the Manchester witnesses, if those Assizes had been held in Manchester, would, as will be seen on referring to statement (No. 1.), have been 1,020*l.* 18*s.*, the average annual saving being 340*l.* 6*s.*

There would also have been a further saving in the travelling expenses of witnesses from other parts of the Hundred of Salford, which may, I think, be fairly estimated at 1*l.* per case. The average yearly number of these cases during the three years was 80, so that this additional saving would have been 80*l.* per annum, making, together with the above-mentioned sum of 340*l.* 6*s.*, an average yearly saving in the expenses of witnesses of 420*l.* 6*s.*

It will be found from statement (No. 2.) that the average cost of each prosecution from the City of Manchester during these three years was 23*l.* 9*s.* 1*d.*, and from the Borough of Liverpool 19*l.* 15*s.*, the difference being 3*l.* 14*s.* 1*d.*

Complaints have, I understand, been made that great inconvenience results from the attendance of police witnesses and jurymen at the Liverpool Assizes. For some years past an excellent plan, devised by Sir John Bayley, has been acted upon at those Assizes of sending before the grand jury each day until their discharge so many bills of indictment only as are likely to provide the Criminal Court with business, by which means witnesses are kept in attendance a much shorter time than was formerly the case, and a great saving of the public money has been effected.

The list of cases to be taken by the grand jury on each day is prepared by me ten or twelve days before each Assize, and submitted to the criminal judge for his approval. On being approved, it is printed and made public by advertisements and circulars.

To enable me to make out this list I have to read over all the depositions, and to make notes of the length of time which the trial of each case is likely to occupy; and the list is arranged principally with that view. I think, however, that the manner of making out this list might be improved by inserting in it the cases from the Hundred of Salford (commencing, perhaps, with those from the City of Manchester) before any of the cases from other parts of the county. By this means the witnesses from Manchester and the remainder of the Hundred of Salford would be more speedily released than is the case at present, and the grievance complained of with reference to them would be considerably mitigated.

This plan, however, would apply only to those cases in which the commitments have been made at the time when the list is prepared; but the subsequent commitments between that time and the discharge of the Grand Jury would not be likely to cause any very serious inconvenience.

At the winter gaol delivery, when two Courts are generally open for the trial of prisoners, I would suggest that all the cases from the City of Manchester should be taken in one of those Courts, and all those from the remainder of the Hundred of Salford in the other, by which means any difficulties which might arise from the attendance of the prosecuting attorney and police witnesses being required in both Courts at the same time would be avoided.

With regard to the attendance at the Liverpool Assizes of common juryme nfrom the Hundred of Salford, I would remark that at the spring and summer Assizes two sets, of 72 jurors each, are returned by the Sheriff, under the provisions of the 22nd section of

the Jurors' Act, (6 Geo. 4. c. 50), one set serving for the first week, and the other set for the remainder of the Assizes. At the winter gaol delivery one set only is returned, and this is found sufficient.

Under the 42nd section of the Jurors' Act, no person who has served as a common juryman at any Assize or Gaol Delivery within the County of Lancaster is liable to be summoned again at the Assizes for the next two years.

In the County of York this term is four years, and I would venture to suggest that as regards Lancashire the term might well be extended to three years, the jurors' book containing a sufficient number of names for that purpose. If this were done, no common juryman would be liable to serve at the Assizes for more than six days (if he were returned in the first set), or perhaps eight or nine days (if he were returned in the second set), during a period of three years; and I cannot think that such a liability can reasonably be considered to be a very serious hardship.

Upon the whole it appears to me that the grievances complained of with reference to the costs of prosecution and the attendance of witnesses and common jurymen at the Liverpool Assizes, are not by themselves of such a magnitude as to require an additional assize, and that, if not altogether removed, they would be greatly diminished by the means which I have mentioned.

In making this communication to you I have confined myself to those points on which the office which I hold affords facilities for information; and I have adopted this course, not only as appearing to me to be proper in itself, but as being in accordance with the spirit of your letter to me.

I remain, &c.

W. H. Walton, Esq.

F. S. SHUTTLEWORTH,
Clerk of the Crown for the
County Palatine of Lancaster.

STATEMENT No. 1.

	Cases for Trial from the Hundred of Salford.			Cases for Trial from other Parts of the County.	Total.	Amount paid to Witnesses for Loss of Time and Travelling Expenses in Cases from the City of Manchester.	Amount which would have been paid in the same Cases if the Assizes had been held in the City of Manchester.	Amount saved.
	From the City of Manchester.	From other Parts of the Hundred of Salford.	Total from the Hundred of Salford.					
1854.						£ s. d.	£ s. d.	£ s. d.
Liverpool Spring Assizes - -	23	21	44	36	80	135 19 9	51 14 7	84 5 2
Liverpool Summer Assizes - -	34	32	66	57	123	510 7 9	310 15 1	199 12 8
Liverpool Winter Gaol Delivery -	28	22	50	50	100	208 14 0	93 2 0	115 12 0
	85	75	160	143	303	855 1 6	455 11 8	399 9 10
1855.								
Liverpool Spring Assizes - -	19	23	42	55	97	139 19 8	68 0 11	71 18 9
Liverpool Summer Assizes - -	17	30	47	52	199	133 7 0	54 16 0	78 11 0
Liverpool Winter Gaol Delivery -	25	34	59	67	126	208 3 6	88 13 6	119 10 0
	61	87	148	174	322	481 10 2	211 10 5	269 19 9
1856.								
Liverpool Spring Assizes - -	16	24	40	53	93	1 5 6	54 7 7	57 17 11
Liverpool Summer Assizes - -	44	37	81	48	129	3 12 0	144 12 9	220 19 3
Liverpool Winter Gaol Delivery -	23	17	40	59	99	1 0 0	58 8 9	72 11 3
	83	78	161	160	321	608 17 6	257 9 1	351 8 5
Total for the Year 1854 -	85	75	160	143	303	855 1 6	455 11 8	399 9 10
" " 1855 -	61	87	148	174	322	481 10 2	211 10 5	269 19 9
" " 1856 -	83	78	161	160	321	608 17 6	257 9 1	351 8 5
	229	240	469	477	946	1,945 9 2	924 11 2	1,020 18 0
Amount saved per year, on an average of three years - - -								340 6 0

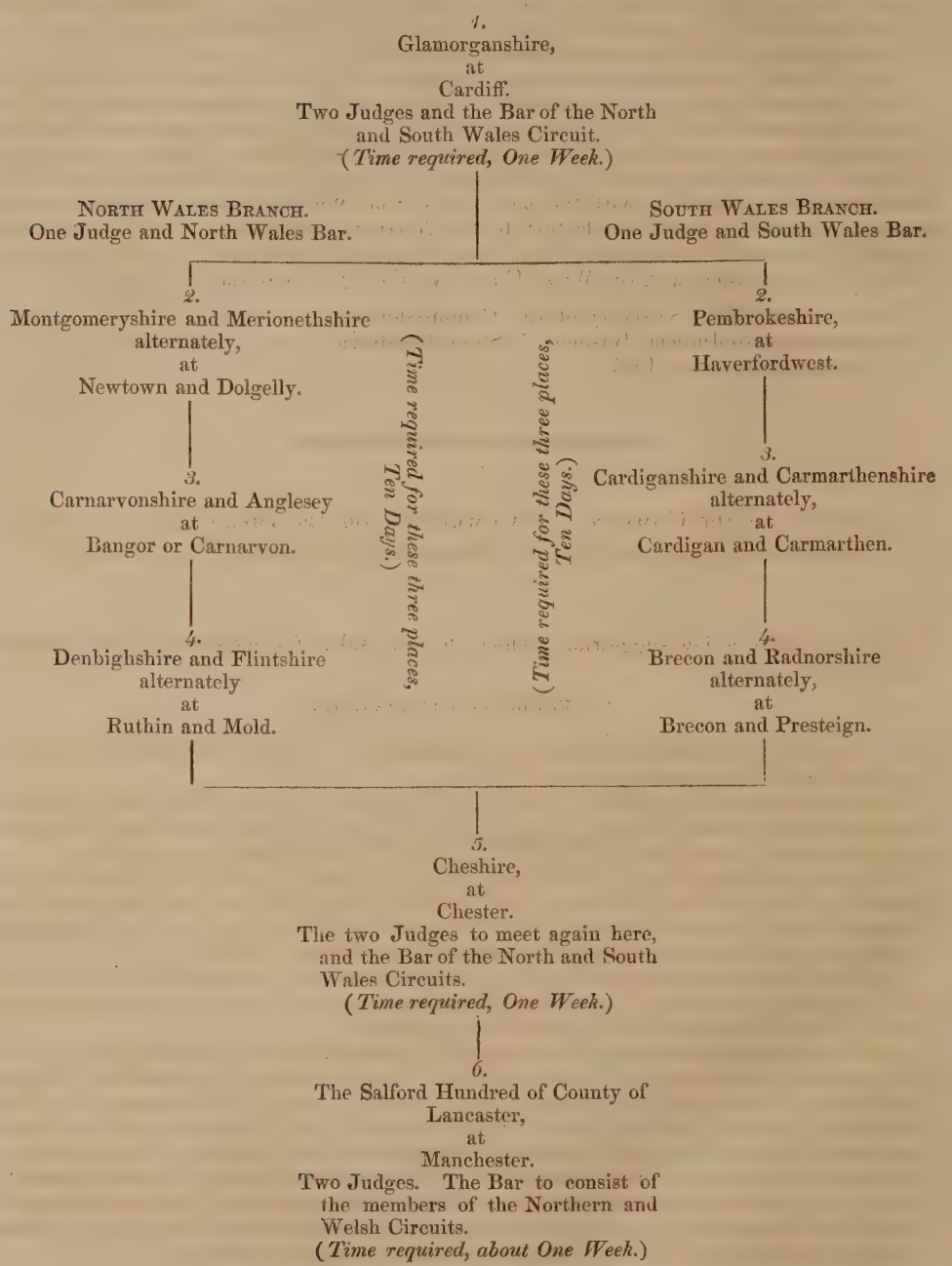
Statement No. 2.

City of Manchester.	No. of Bills of Costs taxed.	Amount of Costs allowed.	Average Cost of each Case.
1854.		£ s. d.	£ s. d.
Liverpool Spring Assizes	23	479 19 11	20 17 4
Liverpool Summer „	32	1,095 14 8	34 4 10
Liverpool Winter „	25	608 18 3	24 7 1
1855.			
Liverpool Spring Assizes	18	428 18 6	23 16 7
Liverpool Summer „	16	350 0 0	21 17 6
Liverpool Winter „	25	563 6 2	22 10 7
1856.			
Liverpool Spring Assizes	16	386 13 0	24 3 3
Liverpool Summer „	44	912 1 10	20 14 7
Liverpool Winter „	23	381 11 0	16 11 9
	222 222)	5,207 3 4	
Average of costs allowed in each case		23 9 1	

Borough of Liverpool.	No. of Bills of Costs taxed.	Amount of Costs allowed.	Average Cost of each Case.
1854.		£ s. d.	£ s. d.
Liverpool Spring Assizes	16	363 7 2	22 14 2
Liverpool Summer „	19	539 10 6	28 7 11
Liverpool Winter „	20	330 12 5	16 10 7
1855.			
Liverpool Spring Assizes	32	564 9 2	17 12 9
Liverpool Summer „	16	275 0 2	17 3 9
Liverpool Winter „	25	598 14 10	23 19 0
1856.			
Liverpool Spring Assizes	27	511 15 8	18 19 1
Liverpool Summer „	25	512 1 0	20 9 8
Liverpool Winter „	24	333 7 0	13 17 9
	204 204)	4,028 17 11	
Average of costs allowed in each case		19 15 0	

THE following SUGGESTIONS, with reference to the REMODELLING of the CIRCUITS now in contemplation, are respectfully submitted to the Notice of the COMMISSIONERS.

WELSH CIRCUIT.



The foregoing modifications are suggested for the reasons following:—

1st. That since the last arrangement of the Circuits the business in Wales has very perceptibly diminished in every county with the exception of Glamorganshire. In that county, on the contrary there has been a considerable increase, the consequence of which is that the suitors complain that their causes cannot be satisfactorily disposed of whilst the Assizes in that county are held before a single judge. It has more than once happened that several causes have been made remanets in consequence of there not being sufficient time to try them. To obviate this, and at the same time to comply with the expressed wishes of the inhabitants of Glamorganshire, it is proposed that the two Welsh Judges and the united Bar should attend the Assizes in that county.

2ndly. The amount of business in the other Welsh counties being very light, a consolidation of two counties into one would very materially shorten the duration of the

Circuit, without in any great degree increasing the expenses of the suitors. At the same time it would be a very great relief to a class of persons who are but little considered, namely, the Jurymen. The suitors, prosecutors, and witnesses may complain of the hardships of being brought a greater distance from home, but it is to be kept in mind that they are paid their travelling expenses, and recompensed for their loss of time in attending to what is really their own business; whereas the Jury may be brought away from their business to an Assize town, find that there is not a single case to be tried, and yet receive no remuneration for their expenses, trouble, and loss of time. By consolidating two counties, and holding the Assizes in each alternately, only one-half of the present number of Jurymen would be required, as the cases from both counties would be tried by a Jury of the county in which the Assizes chanced to be held.

3rdly. Taking it for granted that some alteration will have to be made in the Northern Circuit, and that the prayer of the citizens of Manchester for a separate Assize for the Salford Hundred of the County of Lancaster will be acceded to, it is suggested that the least violent change would be to unite Manchester with the Welsh Circuit. As it is not proposed to exclude the members of the Northern Circuit from attending the Assizes at Manchester in conjunction with the members of the Welsh Bar, such an arrangement would probably be thought satisfactory by the Northern Circuit Bar. By this arrangement the Northern Circuit would be shortened by about a week, whilst, notwithstanding the addition of Manchester, the Welsh Circuit would not be materially lengthened.

W. H. Walton Esq., Secretary of the Commission for
Inquiring into Judicial Business, 7, Stone Buildings,
Lincoln's Inn. May 1857.

Suggestions to the Common Law Commission on the Improvement of present Arrangements for transacting Business on the South Wales Circuit.

I beg to offer a few suggestions, which, for the sake of convenience, I will arrange under distinct heads :—

I.—Forms and Ceremonies.

1. The call of magistrates is most rarely responded to by any magistrates except such as attend also in the capacity of grand jurors.

It is therefore a useless ceremony, and since the names in some of the counties amount to a very large number, the time lost on the whole Circuit to the transaction of business is considerable. I suggest, therefore, that it should be altogether dispensed with.

Without recommending any substitute for this roll call, I would still observe that it would be more useful to call over, after the grand jurors, both the petty jurors and the witnesses bound by recognizances. This might secure their presence at the first sitting of the Court, and prevent delay in the presenting and finding of Bills.

2. The Proclamation against Vice is in its substance so unimpressive, and tends so little to give that solemnity to the proceedings which such a form ought to impart, that it should either be amended and shortened, or withdrawn.

3. The opening and reading of the original Commissions from the Crown Office, as an indispensable preliminary to the transaction of any business, is a condition fraught with anxiety to the Clerk of Assize, and it is attended always with some risk to the interests of justice. I am not aware of any occasion in which these originals have been lost, but I think that the grave interests of justice should not be exposed to the possibility of defeat from accident. The Commissions might be printed in the "London Gazette," and any copy of that publication read out in lieu of the originals, if it be thought needful to retain the ceremony of opening and reading the Commission at all in these days, when the Press can do so much to supersede the necessity of local publication.

II.—Local Jurisdictions.

The jurisdiction of boroughs and towns which are also counties, in no cases, so far as I am aware, furthers the proper administration of justice. In all cases it leads to some loss of time, and in some places it practically hinders the due administration of the law. Local acquaintanceship, prejudice, and influence have, I fear, not uncommonly prevented a rightful verdict. There is no evidence which appears to be strong enough to insure a conviction sometimes, and the indifferent spectator is tempted to surmise that some local feeling misleads the jury, or that the influence obtained over the petty jurors, through long standing relations of attorney and client, between the attorney employed on one side and the jurors empannelled, is leading to a perversion of justice. I am aware, indeed, that the legislature has provided a remedy, but it is not resorted to in many cases where its application would be salutary.

III.—Places of Holding the Assizes.

If the present system of holding Assizes in some town within every county of the Circuit be preserved, it is not, I think, quite consistent with the due attention to the interests of the whole county of Cardigan that its Assizes should be held twice a year in the town of Cardigan, situate as that place is upon the south-western border of a county more than fifty miles in extent, and having its most active operations of commerce, its lead mines and some of its most important towns, such as Aberystwith and Aberayron, towards its north-eastern extremity. Under this point of view I would suggest that one Assize should be held at Aberystwith and one at Cardigan, or that both should be held in a situation like that of Lampeter or Tregaron, which are more central. This recommendation proceeds, as I said, only on the supposition that the Assizes will continue to be held within the body of every county on the Circuit.

IV.—Consolidation of Counties.

The business of some counties is so slight that it would save time and expense on the part of the Judges, the Sheriffs, the Under-Sheriffs, the Bar, the Officers of the Court, the Judge's Officers, and some of the Attornies, and therefore it would also so far diminish the expense and expedite the action of justice itself, if, in such counties, some central spot could be selected for holding the Assizes for two or three counties together. Carmarthen is so situate that without much additional trouble and inconvenience to witnesses and attornies the prisoners and causes belonging to Pembrokeshire and Cardiganshire might be tried there. The presence of one Sheriff would be sufficient, and this arrangement would relieve the county gentlemen. The Grand Jury need not be larger than that now required for the business of a single county. By a proper distribution, therefore, of duties amongst the gentry of the three counties a very considerable alleviation of local burdens, as affecting the gentry, would be secured.

The Jurors and Witnesses and Attornies of Carmarthenshire and Cardiganshire would feel no increase either in the expense or in the trouble incurred by their attendance at Assizes; a smaller number of farmers and tradesmen would be called upon at each Assizes to quit their homes, and this would bring relief by no means inconsiderable to the yeomanry and middle class of the counties. It is true that in Pembrokeshire some slight inconvenience might be incurred by the somewhat greater distance of Carmarthen from the centre of Pembrokeshire than of Haverfordwest from the same point, but the chief towns and places lie upon railroad leading to Carmarthen, and I do not think that this ground of objection is sufficiently great and important to outweigh the other benefits resulting from a change in this respect. One objection, indeed, remains to be considered. The Jurymen from parts of Pembrokeshire being English in their language are altogether more efficient organs for the administration of justice than the yeomen of Carmarthenshire and Cardiganshire. But it would not be difficult, I conceive, to summon so many Pembrokeshire Jurors from those districts as would secure to Pembrokeshire persons and interests the advantages which their local superiority may be supposed to give them at present.

I think, therefore, that Carmarthen might be selected as a proper place for the administration of justice in cases from Pembrokeshire and Cardiganshire, and I have still less hesitation in recommending that Cardiganshire causes and prisoners should be tried at Carmarthen in preference to Cardigan.

V.—Number of Judges.

Unless Monmouthshire or Herefordshire be added to the South Wales Circuit, I do not think that the business either is or is likely to be such as to make the presence of a second Judge desirable, and sufficient time may be taken for Glamorganshire on all occasions, without adding greatly to the length of the South Wales Circuit, and when the Assizes are heavy notice can always be publicly given that civil causes will not be taken before the third or fourth day of the Assizes, as the case may require; suitors, therefore, need not be made to incur additional expense through the absence of one Judge devoted to the transaction of Nisi Prius business.

Henry Halford Vaughan,
Clerk of the Crown and of the Assizes.

Letter from H. Linwood Strong, Esq., Clerk of the Crown on the Chseter and North Wales Circuit.

Sir, Pump Court, Temple, 18th Dec. 1856.

In reply to your communication on behalf of the Common Law Commission, I beg to remark that my returns when completed will show that the civil and criminal business in North Wales is on the decrease. With the present amount of business it is unnecessary to have six assize towns in North Wales. The counties of Anglesea and Carnarvon might be joined with great advantage. The business for both counties might be done in two days. Bangor would be the best place for the assizes to be held at, as a glance at a railway map will prove. Holyhead is the only considerable or increasing town in Anglesea, and there is direct communication by railway between that and Bangor; while Beaumaris, the present assize town of Anglesea, is at some distance from the railway. I have been told that the inhabitants of Bangor would be glad to build Courts, but the most ordinary room would be as good as the Courts in the present assize town.

The counties of Denbigh and Flint might also be joined. At present, we have two assize towns within nine miles, and no population between them. The business of both counties might well be transacted at Chester, if Chester continues to be the assize town of Cheshire, but great opposition would be made to this. Wrexham would be a good place to do the business for both counties; but I believe that the only arrangement that could be made without exciting any serious opposition would be that the spring assizes for the two counties should be holden at Mold, and the summer at Ruthin. The reason that I mention Mold for the spring is that there is railway communication to it from Bangor, but not to Ruthin.

It is not so easy to say how the two remaining counties, Montgomery and Merioneth, should be disposed of. I should suggest that no change in these two counties should be made at present, as I believe that it is not settled which of several projected lines of railway will be made.

It is unfortunate that Chester should be at one end of the county, while the principal part of the business comes from the other end. I know of no remedy, unless it be to hold the assizes at Knutsford, where the sessions are held; and to this there would be objections, as the Courts at Chester are new and excellent, and there is no railway station within four miles of Knutsford. On the whole, I think that Chester must remain as at present, but I beg to suggest that it would be advisable at the next winter assize to try the Denbigh and Flint prisoners, if not the whole of the North Wales prisoners, at Chester. In that case, a day should be appointed for the jurors and witnesses to arrive at Chester two or three days after the Chester Commission day, so that their expenses should not be increased by remaining at Chester during the whole assizes. It should be remembered that as in Welsh cases the evidence is frequently given in Welsh, it is advisable that these cases should be tried by Welsh jurymen, and that as the Welsh jurymen understand English imperfectly, it is not desirable that they should try English cases.

I need hardly remark how much time is lost in travelling, opening commission, and other formalities. I have known a Judge be on circuit a fortnight without having been twelve hours in Court, and half that time expended in calling over names of magistrates, waiting for the grand jury to find bills. I have been on the three largest circuits in England as Marshal and Barrister, and I fully believe that if in England there were the same number of circuit towns in proportion to the business as there are in Wales, that the Circuits would last all the year round.

I have the honour to be
Your obedient servant,
H. Linwood Strong,
Clerk of Assize of Chester and North Wales Circuit.

W. H. Walton, Esq.

Sir, Preston, 5th January 1857.

I beg to forward to you the Returns required by your letter of the 15th ultimo, so far as relates to the criminal business, to which my official duties are confined.

No alteration in the existing arrangements for transacting the criminal business in this county appear to me to be requisite; but there is a strong and general feeling that the amount of civil business in the southern division of the county is such as to call for a third assize in each year, for the trial of causes at Liverpool, and I consider that such a change as this in the present system is desirable.

I remain, Sir, your obedient servant,
H. Shuttleworth,
Clerk of the Crown for the County Palatine of Lancaster.

W. H. Walton, Secretary to the Common
Law (Judicial Business) Commission,
Exchequer Office, 7, Stone Buildings,
Lincoln's Inn, London.

Statement handed in by Mr. E. L. Rowcliffe, and referred to by him in his Evidence given on the 25th May 1857.

1, Bedford Row, 25th May 1857.

Speaking from the experience of twelve years, I should say that the business of the Superior Courts of Common Law has not fallen off, but that it has been for some five or six years past, and is now, increasing. Its character has, however, I think, undergone a great change. It has become less local and more commercial. Disputes as to boundaries, watercourses, rights of way, &c., now seldom arise, whilst questions arising out of commercial transactions have greatly increased, and those are the questions which, with questions arising out of Railway, Health of Towns, and other local and personal Acts, Joint Stock Companies' Acts, &c., are now for the most part the subjects of litigation in the Superior Courts. This change renders more necessary than heretofore two things, namely, in those cases in which time is an object, a speedy trial at a time certain; in other cases, a trial at places the nearest and the most ready of access to those in which the litigation arises—those places being for the most part the great manufacturing and shipping towns.

The disputed boundary, or the watercourse or way was a permanent grievance, which must of necessity be disposed of at some time or another. Not so with commercial questions. Transactions succeed one another so rapidly with the trader or merchant, that unless he has a speedy and convenient mode of settling questions arising in his business, he will prefer to submit to a loss, rather than keep an account open; and his time is so valuable that he can better afford to give up the matters in dispute than to embark in litigation which will entail on him any great personal trouble. To attain the first object, a speedy trial at a time certain, I have a strong opinion that a plaintiff should be entitled, as of right, to lay and keep his venue in town, subject, of course, to a discretionary power in the Judge to change it, on special circumstances; and subject to such terms, as to payment of extra costs, &c., as a Judge shall deem fit. Practically, so far as my experience goes, ordinary causes can be tried at but little more expense in town than in the country. The telegraph and railways afford so great facilities for bringing up witnesses, and it may be ascertained in town with so much certainty when a cause is likely to come on, that, although orders are constantly made that a plaintiff shall pay the extra costs of a trial in London, I never remember an instance of such costs being taxed.

The right, therefore, to try in London or Middlesex would lead, in my judgment, to a great increase of town business, and three Judges would be almost constantly employed, except, of course, during the assizes, in sitting at Nisi Prius.

I would state that, in the majority of actions commenced at all periods of the year, when a trial can be had more speedily in town than at the assizes, the venue is originally laid in town, although, in very many cases, afterwards changed, on the defendant's application, to the country.

The sittings in London during term are, however, often complained of as useless and inconvenient, and the sittings during term should perhaps only be held at Westminster.

It would also, I think, be a great advantage if arrangements were made for trying special jury causes between Easter and Trinity terms, if those terms remain unaltered, or about that period. The present arrangement as to cause lists in town are admirable, but I think that the putting of common jury causes at the end of special jury lists not unfrequently causes loss of time and expense; my own view being that the public convenience is best consulted, and the balance of advantage and saving of public time and money attained by the cause lists being made somewhat within the average of the number got through in a day than above it. In very few causes in town or country are the expenses of a day's attendance in court (the expenses of witnesses being the heaviest item) less than 10*l.*, and in the majority of cases very much more, sometimes as much as 100*l.* a day, and even above it.

To attain the second result, a trial at the most convenient place, I think a new arrangement of the circuits imperatively called for. Lancashire, with perhaps a portion of the northern counties, might form one circuit, the assizes in Lancashire being held at Lancaster, Liverpool, and Manchester; and I think that in the latter two places a third assize might be advantageously held. I mention, in proof of it, the number of cases tried in the Borough Court of Liverpool, where the Judge sits four times a year, from 50 to 100 causes being entered at each sitting, some of them of great importance—actions for infringement of patents, and so forth,—and which would, as I am told, if the Superior Courts gave equal facilities, be tried in those courts. I think, too, assizes should be held in the other great manufacturing and shipping towns in the north, and in the other parts of England, but I am not at present prepared to say that I think a third assize necessary, except at Liverpool and Manchester. The experience derived from those places will be a guide to other towns. The assizes might, I should have thought, however, have been distributed more equally through the year, the present spring assizes being held, say, earlier in January, and some alteration made as to the terms. The right, which I have before suggested should be given to plaintiffs, of trying in London or Middlesex, would always give a plaintiff a speedy trial if he desired it; and I do not think the advantages of a third civil assize *throughout the country* commensurate with the trouble and expense it would entail. I fully concede the principle, and experience will show how far it may be conveniently carried. At present

I am satisfied that a vast number of claims are abandoned from the uncertainty as to the time of trial, arising out of the present rule as to venue, and from the assizes being held at so few places, at periods so distant. In Yorkshire, where the assizes are held only at York, the business does not increase, and although the Salford division of Lancashire is, I think, as populous as the Liverpool division, the Salford hundred seldom produces more than a fourth of the causes, if so many. Having regard to the observation I have before made, of the cost of a day's attendance in a cause, I think it would be very desirable that wherever it is practicable cause lists should be prepared, as in London and Middlesex, immediately the entry is closed; and to facilitate this end causes might perhaps with advantage be entered with the under-sheriff or some other officer a few days before the commission day.

I would also express my opinion that at present sufficient time is not always allowed for holding the assizes. Judges are not unfrequently obliged to sit from nine o'clock in the morning till seven or eight o'clock at night; and I have heard an opinion often expressed, that towards the close of the day, jurors, who are unaccustomed to such continuous mental labour, get so tired that their attention cannot be kept up. As to the cause lists in town, so also as to the assizes, I think the balance of public time, money, and convenience would be in favour of giving too long, rather than too short a time for them.

As to the general business in town, my strong impression is, that not less than four Judges should sit in Banc. I do not think that a smaller number would form an equally satisfactory tribunal. How satisfactory the tribunals as at present constituted are, is shown by the fact that the judgment of the Courts in Banc are conclusive in, I should say, at least nine of those cases out of ten, in which an appeal is allowed. The greater the number of Judges, the greater the weight attaching to their judgment; and so protracted litigation, an evil which it is difficult to over-estimate, is avoided. Three Judges are, I think, better than two, but not so good as four. There is, I think, a greater probability of division with three Judges.

The weight which attaches to the judgment of a large number of Judges is shown by the rare occurrence of an appeal from a Court of Error to the House of Lords.

The business of chambers is very important. Interpleader cases, garnishee orders, applications for writs of injunction and mandamus, for writs of certiorari and prohibition, applications for orders to hold to bail, and to set them aside; besides the great number of ordinary interlocutory applications in pending actions, such as for inspection, orders for examination and cross-examination of parties, for commissions, to reform pleadings, &c., involving sometimes questions of great magnitude, and nice points of law, practice, and discretion, are disposed of there, and it is absolutely necessary that there should be a regular attendance of Judges at chambers. During the assizes the business at chambers is far more than one Judge ought, in my opinion, to be expected to get through. He not unfrequently sits from ten till seven hearing from ten to twenty sets of counsel, besides the ordinary business. It would be a great convenience if one Judge attended at chambers daily from eleven o'clock, to dispose of pressing applications, such as orders to hold to bail, to hear counsel on questions requiring time; or possibly, certain questions now argued by counsel at chambers, such as questions on pleading, and might, with great advantage, be taken in public on summons before a Judge sitting in the Bail Court.

It has occurred to me whether references of certain causes, now becoming so favourite, but practically so expensive, a mode of settling litigation, might not with advantage and saving of expense to suitors be taken by Judges. Indeed, the provisions in the Common Law Procedure Act, that causes may be tried by a Judge alone without a jury, seems to point to such a course.

References now not unfrequently occupy ten and twelve days, and even a longer period, which the experience and influence of a Judge would probably bring to a close in a much shorter time.

Looking at all these circumstances, and at the vast and increasing amount of criminal business (the weight and responsibility of which it is difficult to over-estimate) which devolves on the Judges, I am quite at a loss to see how their number can be lessened. At present the illness or absence of even one Judge leads to some inconvenience. If the number were lessened such an event would altogether derange and stop the machinery of the court in which it happened; and I repeat that it is difficult to over-estimate the loss of public time and money, and temper, which arises from any uncertainty about the public business.

With regard to the County Courts, they are no doubt most useful tribunals for the recovery of debts and the determination of trifling disputes; but if the present system of throwing business of every description into them,—insolvencies, references from the Superior Courts, trials of actions commenced in the Superior Courts, business connected with charities, probate of wills, and so forth,—is continued, and if their jurisdiction is still further increased, it seems to me to be utterly impossible that the present number of County Court Judges, or even double the number, can do the work efficiently, and the result must be that yet another system of local Courts must be established, or the County Courts will be neither efficient in small or satisfactory in important matters. I am told now that in one of the largest towns in the north, although the Judge is most able and indefatigable, it is not unfrequently six weeks before a plaint to recover a small debt can be tried. It has always seemed to me, too, that if the litigation of heavy matters, which is necessarily expen-

sive and protracted, is thrown into these Courts, the expense and delay of heavy litigation gives its tone and character to the Court. and so from this cause alone the County Courts will lose those very essentials to their usefulness, cheapness and speedy result.

The Bills of Exchange Act has, of course, greatly diminished the number of causes entered for trial, and it has in all respects worked so well that I should be inclined to extend the principle to simple contract debts, putting the plaintiff perhaps to the filing of an affidavit of his debt before judgment.

I would add that I hear but one opinion expressed as to the admirable working of the Common Law Procedure Acts, and of the great improvements which have taken place of late years in the practice of the Superior Courts. In my judgment these improvements have led to most beneficial results to the public, and have produced, and are producing, a great increase of business, and that still further facilities would lead to still further advantages to the public.

F. L. Rowcliffe.

To the Commissioners on the
Common Law Business Inquiry.

Documents in support of the Application for a Second Assize to be held every Year in the City of Bristol.

To Her Majesty's Commissioners for inquiring into the present arrangements for transacting the Judicial Business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales.

A Memorial of the Committee of the Bristol Law Association, agreed to at a Meeting specially convened for the purpose at the Bristol Law Library, on Wednesday the 25th day of February 1857.

William Ody Hare, Esq., Vice-President, in the chair.

Bristol is a city and county of itself. It is the capital of the West of England and South Wales, and by far the most important place in the Western Circuit.

It is the only city and county in England the venues in which can be tried only once a year.

All offences committed in Bristol, and not triable at Quarter Sessions, have now to be tried at Gloucester, and, in consequence of there being no Spring Assize in Bristol, venues in actions which would otherwise be laid there are continually laid elsewhere.

This occasions very considerable injury, inconvenience, and expense to all parties interested, particularly by the necessity of sending prisoners, with the governor of the gaol, and a great number of policemen, prosecutors, and witnesses to Gloucester twice a year.

The want of a Spring Assize at Bristol is also a great disadvantage to suitors in civil cases. In transitory actions they are obliged to go elsewhere, at a great expense and loss of time, and this is oppressive to defendants, who cannot get the venue changed to Bristol after the Summer Assize. There are some local actions (such as ejectment) in which the venue must necessarily be laid in Bristol, and the Judges will not change that venue in an ejectment for forfeiture; so that, in such a case, on a forfeiture committed after July, the landlord cannot get possession until the Summer Assizes for the following year, and in the meantime is deprived of his rent, and the tenant is allowed to remain in uncontrolled possession,—a case of actual occurrence at the present moment.

For the above reasons, it is respectfully submitted that Bristol ought, as regards the Assizes, to be put upon precisely the same footing as any of the other counties in the Western Circuit.

Will. Ody Hare.

Statement of the Corporation of Bristol in relation to the necessity of establishing Courts of Oyer and Terminer and General Gaol Delivery, and for a Second Annual Assize of Nisi Prius in and for the said City.

The Council of Bristol have determined, in consequence of urgent representations made to them by numerous citizens, to renew an application to Her Majesty's Commissioners for the establishment of a Second Assize of Nisi Prius, and also of a Court of General Gaol Delivery, twice in each year in Bristol, such respective courts to be held by the Judges proceeding to Bristol from the last place on the Western Circuit. The subject is one of considerable importance to the professional and trading inhabitants of the city, for the reasons after stated.

First. As to the Gaol Delivery.—By a charter of Edward the Third, it was granted that Bristol should be separated from the adjoining counties of Somerset and Gloucester, and be *a county of itself*, and the reason assigned for such grant, as recited in the charter, was that Bristol being situated partly in each of the said counties, and at a distance of more than 30 miles from the Assize towns of those counties, occasioned great inconvenience and expense to burgesses having occasion or being bound to attend the Assizes. From the date of the charter (1373) to the time of passing the Municipal Reform Act (1835), a period of more than 400 years, a Gaol Delivery was held by the Recorder in Bristol, and latterly twice in every year. By the operation of the said Act, several adjoining parishes are included within the bounds of the ancient city, and the population has thereby been nearly doubled, and at the last census, in 1851, amounted to 137,328, but the right of trying the various offences which were triable at the Assizes has been removed from Bristol by the abolition of the gaol delivery, and such cases are now triable at Gloucester, distant from Bristol 36 miles. This occasions not only inconvenience, but great injustice to prosecutors, prisoners, and witnesses, and to all persons having occasion to attend at Gloucester on the prosecution of offences committed in Bristol. To the *prosecutor*, by reason of absence from his home and business for a long period, and also by his being subjected to much additional expense to that which would attend a prosecution at Bristol. Witnesses are in most cases exposed to similar inconvenience and expense, and absence from their homes is particularly felt by persons engaged in the performance of public duties, such as medical men (frequently the surgeons of public hospitals and gaols) and police constables. Of the latter, 16 were engaged at the Gloucester Assizes during the last year, by which the city generally was deprived of their services, and great additional labour imposed on the other constables. The prisoner is seriously affected by the impracticability of raising adequate funds to enable him to procure professional assistance and the attendance of witnesses at so great a distance from his home, and he is consequently deprived of the privilege of being properly defended or of his character being fairly submitted to the consideration of the jury; and it is worthy of remark that the prisoner has no allowance from the public to enable him to meet these necessary charges, although the prosecutor receives some portion of his expenses from the county stock.

As to a Second Assize of Nisi Prius.—The same reasons which have been adduced as to the necessity of a Gaol Delivery being held in Bristol apply also in as great a degree to the establishment of a Second Assize of Nisi Prius, a measure which, it is submitted, would be fully justified by the extent of the present population of the city.

Bristol is the last place at which Assizes are held on the Western Circuit, and besides the local business, many causes are tried here at the Summer Assizes from other places, in consequence of the accommodation which a large town affords for witnesses, and the generally acknowledged intelligence of the Bristol juries, who are composed of traders of a superior class, well acquainted with business transactions, and selected from the Burgess Lists, which contain upwards of 8,400 names. Cases constantly occur evincing the necessity of a Second Assize, particularly actions in which the venue is necessarily laid in Bristol, and in which, for instance, in actions of ejectment, the plaintiff is not unfrequently deprived of a remedy for nearly twelve months; this is a peculiar hardship applicable to Bristol only. In many other places, such as Exeter, and indeed in every city in the Western Circuit, the inhabitants have the privilege of trying their causes every six months. It is believed that the proposed plan would meet with the entire concurrence of the Bar of the Western Circuit. It must be remarked, that to carry the desired object into effect a second court must be provided, but it may be assumed that no difficulty would arise in that respect, and that the Town Council will make the required arrangements should this application prove successful, particularly as they highly appreciate the advantages likely to result from its adoption.

Documents in support of the Application for Additional Assizes to be held at Manchester.

To the Honourable the Commissioners for inquiring into the present arrangements for transacting the Judicial Business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales.

The Memorial of the Mayor, Aldermen, and Citizens of the City of Manchester, in the County of Lancaster, under their Corporate Seal,—

Sheweth,

That your Memorialists having learned that the expediency of making alterations in the circuits of the Judges for holding Assizes in England and Wales, avail themselves of this occasion to submit the claims of Manchester, and the important district of which it is the centre, to be considered in the contemplated arrangements.

That the district referred to, comprising the Hundred of Salford, in which Manchester is situated, and which includes the large manufacturing towns of Ashton-under-Lyne, Bolton, Bury, Rochdale, Oldham, and Salford, contains, and if Macclesfield, Hyde, Stockport, Stalybridge, Dukinfield, and other places locally situated in the county of Chester, but intimately connected with Manchester, be also included, a population of upwards of a million and a half, and is not exceeded in wealth, intelligence, and commercial importance by any other district (unless the metropolis be excepted) of equal extent in the kingdom.

That to require its inhabitants in all cases of importance, whether for the determination of civil rights, or the prosecution of criminal offenders, to travel to a great and unnecessary distance from their homes, involves to a considerable extent the denial of justice, and appears to your Memorialists to be such an arrangement as ought only to be maintained upon some weighty and undeniable ground of public necessity.

That no such ground has, to the knowledge of your Memorialists, ever been adduced; the only reason for resisting former applications on the subject having been, as your Memorialists believe, the want of suitable courts for the transaction of Assize business in Manchester.

That your Memorialists have already expressed and again declare their willingness to obviate this objection, by uniting with the remainder of the hundred of Salford in the steps necessary to secure the erection of Assize courts and all other requisite accommodation; your Memorialists submit that this objection ought not to be allowed to deprive this district of that measure of justice which would result in the appointment of Manchester to be an Assize town.

Your Memorialists venture, in regard to civil cases, to urge the fact, amongst many others, that whilst references to arbitration in Manchester are greatly more numerous than in Liverpool, the cause lists of recent Assizes have shown the number of cases from this district to be only about one-third of the total number entered for trial at Liverpool.

Your Memorialists would beg also to refer, amongst many of the evils arising from the present arrangement, to the expense, loss of time, and possible failure of justice consequent thereupon in criminal cases (certain classes of which, considerably extended by the recent "Justices Jurisdiction Act," can only be tried at Assizes), and to other public as well as private evils which more particularly fall within their notice as conservators of the public peace, and the parties responsible for the prosecution of criminal offenders.

That your Memorialists find that in the years 1843 and 1844, there were held in Liverpool six Assizes for goal delivery, the average duration of which was ten to twelve days, during the greater part of which time there were in attendance from the borough of Manchester alone an average of 100 witnesses, or 600 in the whole; but of which number there were 157 police constables, and 33 surgeons and other medical men. That the aggregate expense paid to such witnesses, by order of Court made upon the borough treasurer, amounted to no less a sum than Sixteen hundred and sixty pounds. That this sum, however, by no means measures the actual inconvenience and pecuniary loss (as your Memorialists submit unnecessarily) thrown upon individuals, in being detained for a length of time from their families and callings, nor the hardship to jurors (their expenses not being defrayed by the county), and to the parties accused, whose witnesses are not supported at the public cost, and who therefore are too often precluded from bringing material evidence to character or facts, which they might under a better system obtain.

That amongst the members of the city police force so in attendance are obviously included the most experienced officers, the most successful in detecting offenders being, of course, the most frequently required as witnesses against them, and generally four at least out of the five superintendents, besides a considerable number of inspectors and other superior officers.

That without further noticing the great expense as above unnecessarily occasioned to the city of Manchester, and doubtless in the same proportion to other parts of the hundred of Salford, your Memorialists would especially urge upon your consideration, that the absence of so many days together of so large a proportion of the superior officers of the detective and watch departments of the police, and who, if the Assizes were held in Manchester, would remain upon the spot to discharge their duties in repressing and detecting crime and preserving the peace, is in the highest degree inconvenient, objectionable, and unsafe.

Your Memorialists therefore pray that you will be pleased to take the claims of Manchester and the rest of the hundred of Salford into your serious consideration, and to recommend that in the new arrangements which may be made in accordance with your Report, the Assize for the hundred of Salford shall be holden at Manchester.

And your Memorialists will ever pray, &c.

To the Honourable the Commissioners for inquiring into the Expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the MANCHESTER LAW ASSOCIATION, being a SOCIETY of SOLICITORS of Her Majesty's High Court of Chancery, by the undersigned, being the PRESIDENT of such ASSOCIATION, duly authorized in this behalf,—

SHEWETH,

THAT the Manchester Law Association includes nearly all the attorneys practising in Manchester and the neighbouring towns.

That the Assizes for the County Palatine of Lancaster are holden at Liverpool for the despatch of all Assize business arising in the southern division of the county.

That the said southern division consists of the hundreds of Salford and West Derby, Liverpool being the largest town in the hundred of West Derby, and Manchester the largest town in the hundred of Salford.

That the population, as taken at the census of 1851, of Liverpool is 375,955, and of the hundred of West Derby 632,987, and that the population of Manchester and Salford is 401,321, and the population of the hundred of Salford is 937,793.

That the following, among other towns, are in the hundred of Salford, namely:—

Ashton-under-Lyne, containing a population of	-	56,959
Bolton le Moors „	-	61,171
Oldham „	-	72,357
Rochdale „	-	98,013
Bury „	-	70,143
Middleton „	-	16,796
Dean „	-	29,819
Dukinfield, in Lancashire „	-	26,418

That Manchester and Liverpool are upwards of 30 miles apart, and that the boundary line between the two hundreds is about equi-distant from Manchester and Liverpool.

That it is the general and earnest desire of the inhabitants of the hundred of Salford that the Assizes should be holden at Manchester for the despatch of all assize business arising in that hundred, and that their reasons for such desire are as follows:—

1. That the great expense and loss of time in attending at Liverpool amount in many instances practically to a denial of justice.

2. That in civil causes claimants frequently abandon their just claims, or submit to unjust settlements, solely to avoid such loss of money and time. That defendants are often induced to submit in part to unjust claims from a fear of incurring similar loss.

3. That the foregoing statements are strongly corroborated by the fact that of the list of causes entered for trial at Liverpool, two-thirds are from the hundred of West Derby, while only one-third are from the hundred of Salford, although it is believed that the business transactions of the Salford hundred far outnumber those of the West Derby hundred, the population of the Salford hundred outnumbering that of the West Derby hundred more than one-third.

4. That the jurymen of the Salford hundred are compelled to stay from home a considerable time and at great expense, and are engaged for the most part in the business of the West Derby hundred, while the jurymen of West Derby are near their homes, and are not called upon to devote an equal amount of time to the business of the Salford hundred.

5. That the case is still harder on special jurymen, who, being usually persons in the position of merchants, are nearly always taken from the towns of Manchester or Liverpool, so that those taken from Manchester are from home during the whole period of their service, whilst those taken from Liverpool are not required to quit their homes at all.

6. That, serious as are the evils above mentioned, still greater evils arise in connexion with the criminal business of the hundred.

7. That in criminal cases the number of witnesses in each case is much greater than in civil cases. That vast numbers of persons are compelled to attend at Liverpool as witnesses generally for a great length of time, at great cost to the county, and at the same time frequently at considerable loss to themselves.

8. That many of such witnesses are the most efficient of the police, who are thus taken from their duty to the injury of the public.

9. That many of your Memorialists, speaking from professional experience, can state that the prisoners who are advised that they have a good defence are not unfrequently obliged

to abandon such defence solely because they cannot pay the expenses of the necessary witnesses.

10. That between Manchester and every part of the Salford hundred there is direct and immediate railway communication.

That, for the above reasons, your Memorialists respectfully submit that Assizes for the hundred of Salford ought to be holden at Manchester.

Your Memorialists therefore pray that you will be pleased to take their representations into your consideration, and your Memorialists venture to express their confident hope that you will recommend that Assizes for the hundred of Salford may be holden at Manchester.

And your Memorialists will ever pray, &c.

JAMES CROSSLEY, President.

MEMORIAL from the LIVERPOOL LAW SOCIETY.

THE SPECIAL COMMITTEE to whom it was referred by a meeting of the Liverpool Law Society, held on the 24th April 1857, to prepare *a statement* showing the inconvenience suffered by the public and the profession by the mode in which the Cause List was disposed of at the last Assizes held at Liverpool for the Southern Division of the County of Lancaster, and to bring the subject under the notice of Her Majesty's Commissioners now inquiring into the arrangements for transacting Judicial Business, and to express the opinion of the Society as stated in their resolutions then passed, and to whom also a letter from the Secretary of the Incorporated Law Society relative to the re-arangement of the Law Terms and Assize Circuits generally has been since referred, have agreed upon the following statement.

At the Spring Assizes, 1857, holden at Liverpool, 102 causes were set down for trial, 23 of which were entered in the first or "Salford" list, and 79 in the second or "West Derby" list; of these causes 10 in the first and 29 in the second list were marked for Special Juries, two of them being for juries struck on the old system.

This large amount of business was despatched in about 14 days, one Judge sitting during 9 days and two Judges sitting during the remaining 5 days; in other words, a period equal to 19 days, had the business been disposed of by one Judge, was devoted to the trial of these causes. This period would allow about five causes for each day, obviously too short a period considering the large proportion of Special Jury causes, and the important nature of nearly all the Civil Business, now that small debt cases which used to well the lists are disposed of in the local courts.

A closer examination of the mode in which the List was disposed of at the last Assizes will disclose results still more remarkable as regards the Special Jury causes.

No Special Jury cause was taken until the eighth business day of the Assizes, namely, the 31st of March. On that day, the Judge presiding in the Nisi Prius Court commenced these trials.

The Judge who had presided in the Crown Court, having finished the business of that Court, and having also finished such Common Jury causes as had not been tried by the other Judge, also began to try Special Jury causes on Thursday the 2nd April, late in the afternoon.

On the 7th April the Assizes were over. Deducting the Sunday, 11 days in all, 7 by the one Judge and 4 by the other, had sufficed (we cannot say to try), but to dispose of 39 Special Jury causes. Moreover, during the first 4 days of this period, the Nisi Prius Judge had disposed of no more than 5 Special Jury causes. In 4 days, therefore, the two Judges dealt with the remaining 34 Special Jury causes. Again, the whole of one of these days was occupied with a cause in the "Salford" list; only 6 days, therefore, were devoted to the 29 Special Jury causes in the "West Derby" list, namely, 2 by the one Judge and 4 by the other Judge.

But the grievance did not rest there. The trial of Special Jury causes by the Judge who had presided in the Crown Court was in direct contravention of the very well considered order made by Mr. Baron Martin and Mr. Justice Willes in March 1856, which confined any assistance given by the Judge of the Crown Court to the remaining *Common* Jury causes. The confusion and inconvenience resulting from this change were very great. The leading counsel were in many instances prevented from appearing in causes in which they held briefs, and the business was hurried through in a manner unsatisfactory in the highest degree to all concerned.

In another instance, the salutary order of March 1856, directing the daily preparation by the prothonotary of a list of a certain number of causes to be taken on the following day, although adhered to in form, was so far departed from as to be wholly useless. From

10 causes (the reasonable number included in the first day's list) the daily number was increased gradually until, on the 4th of April, all the then remaining causes were put into the paper, and without any intimation as to the Judge before whom they would be taken. It is difficult to overstate the amount of confusion and annoyance caused to all parties engaged by this departure from the order.

Having thus stated the general grievance experienced by the public and the profession at the last Assizes, it will tend further to explain the evil consequences of such proceedings if one cause is selected as an example. The Special Jury cause of "Miller and others *v.* Fletcher and another," No. 41 in the second list, was, early in the Assizes, on application, appointed by the Judge presiding in the Nisi Prius Court to be taken before him on the 2nd of April, a great number of witnesses from London having to attend the trial. On that day the witnesses were in attendance, and both parties were ready to proceed, when it was announced that the cause had been transferred to the other Judge, who was at the time engaged on the Common Jury cases. About 5 P.M. No. 41 was called on by that Judge (the Common Jury cases being finished), and although the leading counsel on both sides were then engaged in the other court, the Judge insisted on the cause being opened. At the sitting of the Court on the following morning the Judge intimated that the cause must be referred, and, on the parties objecting to that course, the Judge stated shat he would not try it then, and would place it at the bottom of the list. Under pressure of this threat the parties had no option but to refer, and the result has been an enormous increase of expense in meetings before the arbitrator in London, and which are only just concluded.

The cause was an action against shipbuilders for negligence in repairing a vessel, and to facilitate the trial of the real question of liability, it had been previously agreed between the parties to refer all questions of detail.

The grievances above stated have not been for the first time experienced at the last assizes; but they were, perhaps, never so strongly forced upon the attention of the public and the profession.

In conclusion of this statement, the Committee annex a copy of the Order above referred to.

Having now stated the local grievance, the Committee proceed to consider the communication of the Incorporated Law Society, which deals with the question of Assizes, Circuits, and Law Terms generally; and the resolutions which have been adopted by the Liverpool Law Society authorize the Committee to declare the general concurrence of that Society in the views of the Incorporated Law Society.

The opinions of the Liverpool Law Society may be thus stated:

As to the Assizes to be holden for the Southern Division of the County of Lancaster,—

1. That Assizes should in future be holden at Manchester as well as at Liverpool.

2. That the order of Mr. Baron Martin and Mr. Justice Willes of March 1856 above referred to should be as nearly as possible adhered to in the despatch of business, except that it is expedient that no causes whatever, special or common, shall be tried before the Judge who presides in the Crown Court.

3. That the Civil Business of this Division of the County of Lancaster requires the holding of a Nisi Prius Court three times a-year for its proper despatch.

As to the Assize Circuits and Law Terms generally,—

1. That it is highly desirable that three Circuits should be made in the year instead of two.

2. That the most convenient arrangement would be that there should be three Law Terms (instead of four) to be held (say)

From 14th February to 13th of March.
From 26th May to 24th of June.
From 1st November to 27th of November.

That each Term should be followed by Sittings in London and Middlesex, and that the Circuits should begin after the Sittings; say —

About the 14th of April,
„ 23rd of July, and
„ 5th of January.

That these dates, although not dividing the year so equally as may be desired (owing to the necessity of allowing for the vacation) will be a manifest advantage to the public as compared with the present system.

3. That the holding of Quarter Sessions and other county and town arrangements can be easily re-arranged with reference to the Circuits, and need not form any obstacle to the contemplated changes.

4. That the re-arrangement of the Circuits and Assizes generally is a subject well deserving the attention of the Incorporated Law Society, but one with which this Society

does not feel competent to deal except as it may affect the Northern Circuit. The holding of Assizes at Manchester as well as at Liverpool, will, without doubt, be a great improvement, and be a welcome change to both districts of the county. As the business at the York Assizes is also very heavy, it would further appear desirable to divide the Circuit. With improved facilities for trying causes, the number of trials will probably greatly increase, and the Civil Business of the Southern Division of this County divided, as proposed between Assizes holden at Manchester and Liverpool, will of itself be quite sufficient for one Circuit.

Signed, on behalf of the Liverpool Law Society,

AMBROSE LACE,
President.

ORDER referred to in the preceding Memorial.

LANCASHIRE } AT the Session of Assizes, holden at Liverpool in and for the Southern Divi-
TO WIT. } sion of the said county on Saturday the 22d day of March, in the 19th year of Her Majesty Queen Victoria, before Sir Samuel Martin, Knight, one of the Barons of the said Lady the Queen of Her Court of Exchequer at Westminster, and Sir James Shaw Willes, Knight, one of the Justices of the said Lady the Queen of Her Court of Common Pleas at Westminster, Justices assigned to take the Assizes in and for the said county.

For the better and more convenient arrangement of the business at future Assizes for the Southern Division of this county holden at Liverpool,

It is ordered as follows :—

The Cause list shall be divided into two parts, to be taken in the following order:

1st. Causes wherein the official residence of the plaintiff's attorney (or of the plaintiffs themselves when suing in person) shall be in the Hundred of Salford.

2d. Causes wherein such residence shall be in the Hundred of West Derby, or elsewhere.

Undefended causes in the first list (unless previously disposed of in regular order) shall be called on for trial on the second business day of the Assizes.

Undefended causes in the second list shall be called on for trial at the commencement of that list.

At 4 o'clock on each day a list shall be drawn out by the prothonotary of a certain number of causes to be taken on the following day ; and if the plaintiff shall not be prepared in any cause the same shall be struck out, unless the Court shall otherwise direct.

The Special Jury causes shall be called on for trirl on the eighth business day of the Assizes, and shall be taken in their order, unless the Court shall otherwise direct.

All Common Jury causes remaining undisposed of on the eighth business day of the Assizes shall be postponed until after the Special Jury Causes shall be disposed of, unless the Judge presiding in the Crown Court assist in the trial of causes ; in which case the causes so postponed, or some of them, shall be sent over to him, of which due notice shall be given.

SAMUEL MARTIN.
J. WILLES.

To the Honourable the Commissioners for inquiring into the Expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the MAYOR, ALDERMEN, and BURGESSES of the BOROUGH of SALFORD, in the County of Lancaster, in Council assembled, this Eighteenth day of February One thousand eight hundred and fifty-seven, under their Common Seal,—

SHEWETH,

THAT your Memorialists, having learned that alterations will shortly be made in the Circuits of the Judges for holding Assizes in England and Wales, avail themselves of this occasion to submit the claims of Manchester, and the important district of which it is the centre, to be included in the contemplated arrangements.

That the district referred to comprises (together with Manchester) the entire hundred of Salford, including the large manufacturing towns of Ashton-under-Lyne, Bolton, Bury, Rochdale, Oldham, Salford, and also Macclesfield, Hyde, Stockport, Stalybridge, Dukinfield, and other places intimately connected with Manchester, though locally situated in the county of Chester, possesses a population of about a million and a half, and is not surpassed in wealth, intelligence, and commercial importance by any other district (the metropolis excepted) of equal extent in the kingdom.

That to require its inhabitants in all cases of importance, whether for the determination of civil rights or the prosecution of criminal offenders, to travel to a great and unnecessary distance from their homes causes to a considerable extent a denial of justice, and appears to your Memorialists to be an arrangement which ought only be maintained upon some weighty and undeniable ground of public necessity.

That no such ground has, your Memorialists believe, ever been adduced; the only reason, to the knowledge of your Memorialists, for resisting former applications on the subject being the alleged want of suitable courts for the transaction of the Assize business in Manchester or its neighbourhood.

That your Memorialists are willing to aid in removing this objection, by uniting with the remainder of the hundred of Salford in steps for the erection of Assize Courts and all other requisite accommodation. Your Memorialists submit that, this obstacle being no longer in existence, this district ought not to be deprived of that measure of justice which would result in the appointment of Manchester as an Assize town.

Your Memorialists venture, in regard to civil cases, to urge this fact, amongst many others, that, whilst reference to arbitration in Manchester are much more numerous than in Liverpool, the cause lists of recent Assizes have shown the numbers of cases from this neighbourhood to be very far less than those entered for trial at Liverpool.

Your Memorialists beg also to refer, amongst many of the evils arising from the present arrangement, to the expense, loss of time, and even failure of justice in criminal cases, and to other public as well as private evils, which have more particularly fallen within their notice as conservators of the public peace, or the parties responsible for the prosecution of criminal offenders.

That in the years One thousand eight hundred and forty-three and One thousand eight hundred and forty-four, there were held in Liverpool six Assizes for gaol delivery, the average duration of each being ten to twelve days, during the greater part of which time there were in attendance large numbers of witnesses, including police constables, surgeons, and other medical men. The expenses paid to these witnesses, by orders of Court, were necessarily great; but the amount so paid by no means shows the extent of the inconvenience and pecuniary loss thrown, as your Memorialists submit, unnecessarily upon individuals, by being detained for a length of time from their families and business, nor the hardships to jurors, whose expenses are not being defrayed by the county, and to the parties accused, whose witnesses are not supported at the public cost, and who therefore are too often precluded from bringing material evidence to character or facts which they might under a better system obtain.

That amongst the members of the police force so in attendance are necessarily included the most experienced officers, the most successful in detecting offenders being, of course, the most frequently required as witnesses against them.

That, without further noticing the great expense unnecessarily occasioned, your Memorialists would especially urge upon your consideration that the absence for so many days together of a large proportion of the superior officers of the detective and watch departments of the police, and who, if the Assizes were held in Manchester, would remain in the vicinity to discharge their duties in repressing and detecting crime and preserving the peace, is in the highest degree inconvenient, objectionable, and unsafe.

Your Memorialists therefore pray, that you will be pleased to take the claims of Manchester and the rest of the hundred of Salford into your serious consideration, and to recommend that, in the new arrangements which may be made in accordance with your Report, the Assize for the hundred of Salford shall be holden at Manchester or its vicinity.

And your Memorialists will ever pray, &c.

L.S.

CHARLES GIBSON, Town Clerk.

To the Honourable the Commissioners for inquiring into the Expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the BURY IMPROVEMENT COMMISSIONERS being the CORPORATION having the MUNICIPAL GOVERNMENT and REGULATION of the TOWN of BURY in the County of Lacaster, under their Common Seal.

SHEWETH,—

THAT the Assizes for the County Palatine of Lancaster are holden at Liverpool for the despatch of all Assize business arising in the southern division of the county. That the said southern division consists of the hundreds of Salford and West Derby, Liverpool being the largest town in the hundred of West Derby, and Manchester the largest town in the hundred of Salford. That the population (as taken at the census of 1851), of Liverpool is 375,955, and of the hundred of West Derby 632,987, and the population of Manchester and Salford is 401,321, and the population of the hundred of Salford is 937,793. That the following, amongst other towns are in the hundred of Salford, namely, Ashton-under-Lyne, containing a population of 56,959 ; Bolton-le-Moors, 61,171 ; Oldham, 72,357 ; Rochdale, 98,013 ; Bury, 70,143 ; Middleton, 16,796 ; Dean, 29,819 ; Dukinfield (in Lancashire), 26,418. That Manchester and Liverpool are upwards of 30 miles apart, and that the boundary line between the two hundreds is about equi-distant from Manchester and Liverpool. That it is the general and earnest desire of the inhabitants of the hundred of Salford that the Assizes should be holden at Manchester for the despatch of all Assize business arising in that hundred, and that their reasons for such desire are as follows :—

1. That the great expense and loss of time in attending at Liverpool amount in many instances, practically to a denial of justice.

2. That in civil causes claimants frequently abandon their just claims, or submit to unjust settlements, solely to avoid such loss of money and time. The defendants are often induced to submit in part to unjust claims from a fear of incurring similar loss.

3. That the foregoing statements are strongly corroborated by the fact, that of the list of causes entered for trial at Liverpool, two-thirds are from the hundred of West Derby, while only one-third are from the hundred of Salford, although it is believed that the business transactions of the Salford hundred far outnumber those of the West Derby hundred, the population of the Salford hundred outnumbering that of the West Derby hundred more than one-third.

4. That the jurymen of the Salford hundred are compelled to stay a considerable time from home, and at great expense, and are engaged for the most part in the business of the West Derby hundred, while the jurymen of West Derby are near their homes, and are not called upon to devote an equal amount of time to the business of the Salford hundred.

5. That the case is still harder on special jurymen, who being usually persons in the position of merchants, are nearly always taken from the towns of Manchester or Liverpool, so that those taken from Manchester are from home during the whole period of their service, whilst those taken from Liverpool are not required to quit their homes at all.

6. That serious as are the evils above mentioned, still greater evils arise in connexion with the criminal business of the hundred.

7. That in criminal cases the number of witnesses in each case is much greater than in civil cases. That vast numbers of persons are compelled to attend at Liverpool as witnesses generally for a great length of time, at great cost to the country, and at the same time frequently at considerable loss to themselves.

8. That many of such witnesses are the most efficient of the police, who are thus taken from their duty to the injury of the public.

9. That between Manchester and every part of the Salford hundred there is direct and immediate railway communication.

That, for the above reasons, your Memorialists respectfully submit that Assizes for the hundred of Salford ought to be holden at Manchester.

Your Memorialists therefore pray that you will be pleased to take their representations into your consideration, and your Memorialists venture to express their confident hope that you will recommend that Assizes for the hundred of Salford may be holden at Manchester.

And your Memorialists will ever pray, &c.

WM. HARPER.

L.S.

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the MAYOR, ALDERMEN, and BURGESSES of the TOWN and BOROUGH of ROCHDALE, in the County Palatine of Lancaster,—

SHEWETH,

THAT the southern division of the County Palatine of Lancaster consists of the hundreds of Salford and West Derby.

That the population of the hundred of Salford, as taken at the last census, was nine hundred and thirty-seven thousand seven hundred and ninety-three, and of the hundred of West Derby, six hundred and thirty-two thousand nine hundred and eighty-six.

That the Assizes for the said County Palatine are holden at Liverpool, in the hundred of West Derby, for the despatch of all business arising within the said southern division.

That Liverpool is the largest town in the hundred of West Derby, and contains three hundred and seventy-five thousand nine hundred and fifty-five inhabitants.

That Manchester is the largest town in the hundred of Salford, and that Manchester and Salford, which are contiguous, contain a population numbering four hundred and one thousand three hundred and twenty-one.

That the several towns and parishes of Ashton, Bolton, Oldham, Rochdale, Bury, Middleton, Dean, and Dukinfield are all in the hundred of Salford, and contain a population of more than four hundred thousands.

That all the said towns are within a distance of fourteen miles from Manchester, whilst all of them are more than twice, and some of them thrice, that distance from Liverpool.

That Manchester and Liverpool are upwards of thirty miles apart, and that the boundary line between the two hundreds is about equi-distant from Manchester and Liverpool.

That the population of the town and borough of Rochdale is at present thirty-one thousand, and the parish contains upwards of ninety thousand inhabitants.

That the town of Rochdale is distant forty-one miles from Liverpool, and only eleven miles from Manchester.

That it is the general and earnest desire of your Memorialists, and they believe of the inhabitants of the hundred of Salford, that the Assizes should be holden at Manchester for the despatch of Assize business arising in that hundred, and that their reasons for such desire are as follows :—

1. That it is unfair and unreasonable to require the inhabitants of the hundred of Salford, numbering one-third more than the inhabitants of West Derby, to attend the Assizes at Liverpool.

2. That the great expense and loss of time in attending at Liverpool amount in many instances practically to a denial of justice.

3. That claimants in many instances in civil cases abandon their claims, or submit to unjust settlements, solely to avoid such loss of money and time, and that defendants are often induced to submit in part to unjust claims from fear of incurring a similar loss.

4. That the foregoing statements are strongly corroborated by the fact that of the list of causes entered for trial at Liverpool, two-thirds are from the hundred of West Derby, and only one-third from the hundred of Salford, whilst it is believed that the business transactions of the Salford hundred far outnumber those of the West Derby hundred.

5. That the jurymen of the Salford hundred are compelled to stay a considerable time from home, and at great expense, and are engaged for the most part in the business of the West Derby hundred, while the jurymen of West Derby are near their homes, and are not called upon to devote an equal amount of time to the business of the Salford hundred.

6. That serious as are the evils above mentioned, still greater evils arise in connexion with the criminal business of the hundred.

7. That in criminal cases the number of witnesses in each case is much greater than in civil cases; that vast numbers of persons are compelled to attend at Liverpool as witnesses, generally for a great length of time, at great loss to the county, and at the same time frequently at a considerable loss to themselves.

8. That many of such witnesses are the most efficient of the police, who are thus taken from their duty to the injury of the public.

9. That many prisoners who are advised they have a good defence, are not unfrequently obliged to abandon such defence, solely because they cannot pay the expense of the necessary witnesses.

10. That between Manchester and Rochdale and the several towns above mentioned, and every part of the hundred of Salford, there is a direct and immediate railway communication. That suitors, prosecutors, witnesses, and other persons required to attend to attend the Assizes for the said hundred of Salford would (if the same were held at Manchester) be enabled to go from and return to their homes on the same day, be relieved

from much anxiety on account of absence from business, and be saved a great amount of expense consequent upon attendance at Assize business.

That for the above reasons your Memorialists respectfully submit that Assizes for the hundred of Salford ought to be holden at Manchester.

Your Memorialists therefore pray that you will be pleased to take their representations into your consideration, and that you will recommend that Assizes for the hundred of Salford may be holden at Manchester.

And your Memorialists will ever pray, &c.

Affixed pursuant to resolution of the Council of the Ninth March 1857. L.S.

JACOB BRIGHT, Mayor.

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the MANCHESTER SOCIETY OF GUARDIANS for the PROTECTION of TRADE, established in One thousand eight hundred and twenty-six, being an ASSOCIATION of BANKERS, MERCHANTS, and others, in the CITY of MANCHESTER and surrounding neighbourhood, comprising at present upwards of one thousand members.

SHEWETH,

1st. That when the Assize business for the hundreds of Salford and West Derby was removed from Lancaster to Liverpool, the latter place was selected as being then of the greatest importance.

2d. That since the removal of the Assizes to Liverpool, the hundred of Salford has so greatly increased in population that it now far outnumbers the hundred of West Derby; the population of the latter being somewhat over six hundred thousand, whilst that of the former is over nine hundred thousand.

3d. That the fact of having to attend at Liverpool (a distance of thirty miles from Manchester) for the disposal of Assize business often deters your Memorialists and others from obtaining the benefit of the law in seeking to enforce their rights, as the time required to attend a tribunal which calls upon them to leave their places of business, and often hundreds of servants for days together, is frequently found to be a more serious loss than the benefits they seek to derive from the protection of the law. Thus, your Memorialists and many others are deprived of the advantage of the laws of their country.

4th. That the expense of attending with witnesses and attorneys at a place so far distant from home is another impediment to the benefits which Her Majesty's subjects in the hundred of Salford ought to derive from the law.

5th. That many of your Memorialists would rather suffer the penalty of the law than attend on a jury which requires them to be so long absent from their business. This also is found to be an evil of no small magnitude.

6th. That for these and many other reasons the interests of your Memorialists and the inhabitants generally of the hundred of Salford, would be greatly promoted by Assizes being held in the city of Manchester.

Your Memorialists therefore pray that the Assize business for the hundred of Salford may henceforth be conducted at Manchester instead of Liverpool, as aforetime.

And your Memorialists will ever pray, &c.

WM. BUTTERFIELD, Chairman of the Committee.

Manchester, March 13, 1857.

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the GUARDIANS of the POOR of the TOWNSHIP of MANCHESTER.

SHEWETH,

That the Assizes for the County Palatine of Lancaster are holden at Liverpool for the despatch of all Assize business arising in the southern division of the county. That the said southern division consists of the hundreds of Salford and West Derby; Liverpool being the largest town in the hundred of West Derby, and Manchester the largest town in the hundred of Salford. That the population (as taken in the Census of 1851) of Liverpool is 371,955; and of the hundred of West Derby, 632,987; and the population of Manchester and Salford, 401,321; and the population of the hundred of Salford is 937,793. That the following, amongst other towns, are in the hundred of Salford, namely,—Ashton-under-Lyne, Bolton-le-Moors, Oldham, Rochdale, Bury, Middleton Dean, and Dukinfield (in Lancashire), comprising together a population of 431,676.

That Manchester and Liverpool are upwards of thirty miles apart, and that the boundary line between the two hundreds is about equidistant from Manchester and Liverpool. That it is the general and earnest desire of the inhabitants of the hundred of Salford, that the Assizes should be holden at Manchester for the despatch of all Assize business arising in that hundred, and that their reasons for such desire are as follows :—

1. That great expense and loss of time will thereby be saved to all persons in this district, whose attendance is required at the Assizes.
2. That in many cases claimants frequently abandon their just claims, or submit to unjust settlements, solely to avoid the loss of money and time at present incurred.
3. That of the list of causes entered for trial at Liverpool, two-thirds are from the hundred of West Derby, while only one third are from the hundred of Salford, although it is believed that the business transactions of the Salford hundred far outnumber those of the West Derby hundred, the population of the Salford hundred outnumbering that of the West Derby more than one third.
4. That the jurymen of the Salford hundred are compelled to stay a considerable time from home, and at great expense, and are engaged for the most part in the business of the West Derby hundred, while the jurymen of West Derby are near their homes, and are not called upon to devote an equal amount of time to the business of the Salford hundred.
5. That the case is still harder on special jurymen, who being usually persons in the position of merchants, are nearly always taken from the towns of Manchester and Liverpool, so that those taken from Manchester are from home during the whole period of their service, whilst those taken from Liverpool are not required to quit their homes at all.
6. That serious as are the evils above mentioned, still greater evils arise in connexion with the criminal business of the hundred.
7. That in criminal cases the number of witnesses in each case is much greater than in civil cases ; that vast numbers of persons are compelled to attend at Liverpool as witnesses, generally for a great length of time, at great cost to the country.
8. That many of such witnesses are the most efficient of the police, who are thus taken from their duty to the injury of the public.

That for the above reasons, your Memorialists respectfully submit that Assizes for the hundred of Salford ought to be holden at Manchester.

Your Memorialists therefore pray that you will be pleased to take their representations into your consideration ; and your Memorialists venture to express their confident hope that you will recommend that Assizes for the hundred of Salford may be holden at Manchester.

And your Memorialists will ever pray, &c.

Signed by order of the Manchester Board of Guardians, this 19th day of March 1857.

THOS. CREWDSON, Chairman presiding.
JNO. HARROP, Clerk.

To the Right Honourable and Honourable the Commissioners appointed to inquire into the propriety of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the DIRECTORS of the CHAMBER OF COMMERCE AND MANUFACTURES of MANCHESTER.

SHEWETH,

That for upwards of a quarter of a century the desirableness of holding Assizes in Manchester has been deeply impressed upon successive directors of this institution, which was originally formed for the promotion of such measures as in their judgment would benefit the interests of commerce and the manufacturing industry of the district.

That on the eighteenth of July, one thousand eight hundred and thirty-two, the directors of that year addressed a Memorial to the then Lord Chancellor, the Secretary of State for the Home Department, and the Chancellor of the Duchy of Lancaster, praying that Assizes might be held in Manchester ; that on the twenty-second March, one thousand eight hundred and thirty-four, the directors of that year addressed a petition to His Majesty William the Fourth for the same object ; that on the twenty-fifth August, one thousand eight hundred and forty-one, the directors of this Chamber formed part of a deputation to the Judges then holding Assizes at Liverpool, for the purpose of impressing that object upon their attention, and on the tenth of November, one thousand eight hundred and forty-one, the directors, in a petition to Her present most Gracious Majesty, again urged their fervent prayer for this most necessary correction of a long established and oppressive inconvenience.

That though to this hour the reasonable requirement of this district has been utterly disregarded, yet the same conviction of the necessity of establishing an Assize in this City has not ceased far one moment, and your Memorialists do not hesitate to express a deliberate and firm opinion, that the time has arrived when such measure can be no longer withheld without the infliction of grave injury, amounting in many instances to a denial of justice.

That the hundred of Salford has now risen to a point in population, wealth, and number, and amount of mercantile transactions, with which no similar extent of surface in this empire (except perhaps in the "metropolis") can be compared, and your Memorialists think it a duty to aver that no consideration of personal convenience in those employed in the administration of the law, no morbid adherence to systems rendered by the growth of circumstances unsuitable to the age, ought, in their opinion, to weigh for one moment in considering the claim of the hundred of Salford to have Assize justice administered in Manchester.

That your Memorialists do not trouble you with statistics, because they have been placed before you by others; they consider the principle on which they base their prayer to be obviously irresistible, and therefore with deep earnestness pray—

That your Report may contain a recommendation that Assizes should be established at this City for all trials, causes, or suits at law, which may arise within the hundred of Salford, and that Parliament be moved to enact, that for the due and convenient administration of the law, the said hundred of Salford be required to provide all such buildings as may be requisite for the administration of justice and the personal comfort of the presiding Judges.

By order and on behalf of the Directors of the Chamber of Commerce at Manchester.

THOS. BAZLEY, President.

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

THE MEMORIAL of the MANCHESTER MEDICO-ETHICAL ASSOCIATION.

RESPECTFULLY SHEWETH,

That the Medical profession in this district has long complained of the serious inconvenience that attends the holding of the Assizes for the hundred of Salford in Liverpool, a distance so great from Manchester as to preclude Medical men from returning home daily to attend to their patients, however urgent and serious their cases may be.

That the appointment of a substitute in place of the ordinary medical attendant in cases of severe or complicated sickness is often fraught with incalculable risk and danger.

That medical men are consequently, and unavoidably drawn into most painful positions, not only affecting the moral obligations that subsist in relation to their patients, but seriously involving their professional interests.

That the profession entertains a strong sense of the injustice committed on the part of the authorities who regulate the scale of fees as applied to medical witnesses.

That the fee allowed is not supposed to be a remuneration for the evidence of a scientific witness, but simply to meet the incidental expenses of the day.

That medical men would urge the validity of their claim to be regarded as giving scientific evidence in the exercise of their profession, and that, as a consequence, the fee should be proportionate to their value and importance as scientific witnesses.

That in the event of Assizes being held in the city of Manchester the fee would become a subordinate question, and the equitable claims of the profession in this respect must be considerably modified by the greater convenience that would result, and by the removal of injuries that now press so heavily upon all medical men residing in the district.

Your Memorialists therefore pray that you will be pleased to take their representations into your consideration, and your Memorialists venture to express their confident hope that you will recommend that Assizes for the hundred of Salford be holden at Manchester.

And your Memorialists will ever pray, &c.

Signed on behalf of the Manchester Medico-Ethical Association.

JAMES L. BARDSLEY, Knt., M.D., President.
JOHN ROBERTSON, } Vice-Presidents.
THOMAS RADFORD, M.D. }
JOS. STONE, M.D., } Honorary Secretaries.
JON. WILSON, }

17th April 1857.

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the MANCHESTER and SALFORD GROCERS' COMMERCIAL ASSOCIATION, being an ASSOCIATION of WHOLESALE and RETAIL GROCERS and TEA DEALERS in the CITY of MANCHETSER and BOROUGH of SALFORD, and comprising upwards of Four hundred Members.

SHEWETH,

That when the Assize business of the hundred of Salford and West Derby was removed from Lancaster to Liverpool, the latter place was selected, because of its being then of the greatest importance.

That since the removal of the Assizes to Liverpool the hundred of Salford has very materially increased in population, so that it far exceeds the hundred of West Derby, the population of the latter being somewhat over six hundred thousand, whilst the population of the former is over nine hundred thousand.

That the fact of having to attend at Liverpool (a distance of thirty miles from Manchester) for the disposal of Assize business, very frequently proves a preventative to your Memorialists and others from obtaining the benefit of the law in seeking to enforce their rights; the length of time required to attend before a tribunal, which necessitates their leaving their place of business, and often a great number of servants, for a period of from eight to twelve days, is frequently found to be a greater loss than the benefits they seek to derive from the protection of the law. Thus your Memorialists and many others are deprived of the advantages of the laws of their country.

That the expense of attending with witnesses and attorneys, at so great a distance from home, is a great impediment to the benefits which Her Majesty's subject in the hundred of Salford ought to derive from the law.

That many of your Memorialists prefer suffering the penalty of the law rather than attend on a Jury requiring them to be so long absent from their business; this also is an evil of no small magnitude.

That for these and various other reasons the interest of your Memorialists, and the inhabitants generally of the Hundred of Salford would be greatly promoted by Assizes being held in the city of Manchester.

Your Memorialists therefore pray that the Assize business for the Hundred of Salford may henceforth be conducted at Manchester instead of Liverpool as heretofore.

And your Memorialists will ever pray, &c.

WILLIAM DUNKERLEY, Chairman.
JOHN WOOD SCOTT, Secretary.

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of "The ROCHDALE IMPROVEMENT COMMISSIONERS," under their Common Seal.

SHEWETH,

That the Rochdale Improvement Commissioners are elected by the ratepayers of Rochdale, and have the management and control of the paving, sewering, lighting, scavenging, and manufacture of gas for the town of Rochdale, and are incorporated for those and other purposes by an Act passed in the 16th & 17th year of the Reign of Her Majesty, the short title of which is "The Rochdale Improvement Act, 1853."

That the population of the town of Rochdale within a circle of 1½ miles diameter was, at the last census 29,178, and that the population of the parish was 98,013.

That the inhabitants of the town and parish are earnestly desirous that the Assizes should be held in Manchester for the despatch of all Assize business which may arise in the town and parish.

That, from the circumstance of the Assizes being held in so distant a place as Liverpool, the cost and loss of time is such, that in both Civil and Criminal cases there is a great amount of injustice submitted to, rather than incur the extra expense and inconvenience over that which would be required were the Assizes held in Manchester.

That those persons who are called upon from this neighbourhood to act as Jurymen at the Assizes in Liverpool are put to much greater cost than if they had to attend in Manchester.

That your Memoralists are not desirous to increase or countenance unnecessary litigation; but they cannot but express their belief that, owing to the distance of the Assizes, and the cost of maintenance of witnesses, the rich have an unfair advantage over the poor.

Your Memorialists therefore pray that you will recommend that an Assize Court for the hundred of Salford may be held in Manchester.

And your Memorialists will ever pray, &c. (SEAL.)

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the MAYOR, ALDERMEN, and BURGESSES of the BOROUGH of BOLTON, in the County Palatine of Lancaster, in Council assembled.

SHEWETH,

That the Assizes for the County Palatine of Lancaster are holden at Liverpool for the despatch of all Assize business arising in the Southern Division of the county. That the Southern Division consists of the hundreds of Salford and West Derby; Manchester being the largest town in the Salford hundred, and Liverpool the largest

town in the hundred of West Derby. That the population (as taken at the census of 1851) of Manchester and Salford is 401,321, and the population of the hundred of Salford is 937,793; and the population of Liverpool is 375,955, and of the hundred of West Derby, 632,987. That the parish of Bolton le Moors (in which the town of Bolton is situate) contained, at the last census, 114,712 inhabitants, and the town of Bolton now contains about 70,000 inhabitants. That Manchester and Liverpool are upwards of thirty miles apart; and that the boundary line between the two hundreds is about equidistant from Manchester and Liverpool. That the town of Bolton is about thirty miles from Liverpool, but only eleven miles from Manchester. That it is the general and earnest desire of the inhabitants of the hundred of Salford that the Assizes should be holden at or near Manchester, for the despatch of all Assize business arising in that hundred, and that their and your Memorialists' reasons for such desire are as follow :—

1. That the great expense and loss of time in attending at Liverpool amount, in many instances, practically to a denial of justice. 2. That in Civil causes claimants frequently abandon their just claims, or submit to unjust settlements solely to avoid much loss of money and time. The defendants are often induced to submit, in part, to unjust claims from a fear of incurring similar loss. 3. That the foregoing statements are strongly corroborated by the fact that, of the list of causes entered for trial at Liverpool, two-thirds are from the hundred of West Derby, while only one-third are from the hundred of Salford, although it is believed that the business transactions of the Salford hundred far outnumber those of the West Derby hundred; the population of the Salford hundred outnumbering that of the West Derby hundred more than one-third. 4. That the Jurymen of the Salford hundred are compelled to stay a considerable time from home and at great expense; and are engaged for the most part in the business of the West Derby hundred, while the Jurymen of West Derby are near their homes, and are not called upon to devote an equal amount of time to the business of the Salford hundred. 5. That the case is still harder on Special Jurymen, who, being usually persons in the position of merchants, are nearly always taken from the large towns; so that those taken from Manchester, Bolton, and other large towns are from home during the whole period of their service, whilst those taken from Liverpool are not required to quit their homes at all. 6. That serious as are the evils above mentioned, still greater evils arise in connexion with the Criminal business of the hundred. 7. That in Criminal cases the number of witnesses in each case is much greater than in Civil cases; that vast numbers of persons are compelled to attend at Liverpool as witnesses, generally for a great length of time, at great cost to the county; and, at the same time, frequently at considerable loss to themselves. 8. That many of such witnesses are the most efficient of the police, who are thus taken from their duty to the injury of the public. 9. That between Manchester and every part of the Salford hundred there is direct and immediate railway communication.

That for the above reasons your Memorialists respectfully submit that Assizes for the hundred of Salford ought to be holden at or near Manchester. Your Memorialists therefore pray that you will be pleased to take their representations into your consideration; and your Memorialists venture to express their confident hope that you will recommend that Assizes for the hundred of Salford may be holden at or near Manchester.

And your Memorialists will ever pray, &c.

JAS. KNOWLES, Mayor. (Seal.)

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the undersigned SOLICITORS practising at BOLTON, in the COUNTY of LANCASTER.

SHEWETH,

That the parish of Bolton is situate in the hundred of Salford, in the southern division of the county of Lancaster, and the population thereof, at the census of 1851, was 114,712, and is increasing.

That the Assize business arising in the parish of Bolton is transacted at the Assizes holden at Liverpool.

That the town of Bolton is about thirty miles distant from Liverpool, and only ten miles from Manchester.

That it is the general and earnest desire of the inhabitants of Bolton that the Assies should be holden at Manchester for the despatch of Assize business arising within the hundred of Salford, and that their reasons for such desire are as follows:—

1. That there is constant railway communication between Bolton and Manchester, not occupying more than half an hour in the journey, with trains early enough every morning to enable suitors, witnesses, jurymen, and attorneys to arrive in

Manchester in time for the Court business, and with trains late enough to enable suitors, witnesses, jurymen, and attornies to return home in the evening after the rising of the Court.

2. That there would be a large saving of expense thereby in railway fares, hotel charges, and other expenses.
3. That it is a very serious matter for jurymen to be summoned from Bolton to Liverpool, having to attend there several days, leaving the whole management of their business to servants; whereas, if the Assizes were held at Manchester their minds would be at rest, knowing, as they would, on their return home every evening, the business of the day, and being able to give their orders in a morning before leaving home.
4. That the loss of time of witnesses from the hundred of Salforda ttending the Assizes at Liverpool, especially professional men, is a grievance much and justly complained of.

That for the reasons above mentioned, your Memorialists pray that you will be pleased to take their representations into your consideration, and recommend that the Assizes for the hundred of Salford may be holden at or near Manchester.

And your Memorialists will ever pray, &c.

SAMUEL GASKEN.	JAS. GREENHALGH.	JNO. HULTON.
MATTHEW DAWES.	JOHN HALL.	FREDERIC BROADBENT.
EDMUND HAWORTH.	EDMUND SANGSHAW.	H. W. RUBAIDRON.
THOS. WOODHOUSE.	J. WINDER.	R. G. HINNELL.
CHRISTOPHER BRIGGS.	JOHN GORDON.	JOHN TAYLOR.
JOHN WOODHOUSE.	JAS. WATKINS.	ARTHUR BAILEY.
THOS. LEVER RUSHTON.	G. MARSLAND.	THOMAS MORRIS.
ROB. ARMITSTEAD.	W. R. JACKSON.	
JO. KNOWLES.	J. F. HEYWOOD.	

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The humble MEMORIAL of the MAYOR, ALDERMEN, and BURGESSES of the Borough of OLDHAM, under their Common Seal.

SHEWETH,

That your Memorialists are the Corporation of a borough which at the last census contained upwards of 53,000 inhabitants, and now without doubt containing upwards of 60,000.

That Oldham is situate at the extreme east of the county of Lancaster, and is distant about forty miles from Liverpool, where the Assizes for the southern division of Lancashire are held.

That Manchester is only seven miles from Oldham, and so far as regards the hundred of Salford, it is exceedingly desirable that Assizes shall be held in Manchester.

That the holding of the Assizes at a place so distant as Liverpool, entailing upon all persons residing at the eastern part of the county who have occasion to attend the Assizes there a great and unnecessary loss of time, expense, and inconvenience, and the persons obliged to attend there as jurymen, parties, witnesses, and attorneys are very numerous, although much business is abandoned on account of the expense.

That your Memorialists forbear to trouble you with any statistics on the subject, because they are unnecessary in themselves, and are more properly supplied from Manchester, where the Assizes are proposed to be held; but they cannot refrain from making one observation, and pressing it on your consideration; namely, that so long as the duty of administering justice is recognized by the State, it is incumbent on the Government that the Courts where it is administered should be accessible at a reasonable expense.

Your Memorialists therefore pray that you will recommend to Her Majesty the holding of Assizes for Salford hundred at Manchester.

Given under our Common Seal the Eleventh day of March 1857.

JOSIAH RADCLIFFE, Mayor.

(Seal.) J. SUMMERSCALES, Town Clerk.

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The humble MEMORIAL of the undersigned SOLICITORS practising at OLDHAM in the County of LANCASTER,

SHEWETH,

That the borough of Oldham is situate in the hundred of Salford, in the southern division of the county of Lancaster, and contained at the last census upwards of 53,000 inhabitants, and now without doubt contains upwards of 60,000.

That Oldham is situate at the extreme east of the county of Lancaster, and is distant about forty miles from Liverpool, where the Assizes for the southern division of Lancashire are held.

That Manchester is only seven miles from Oldham, and readily accessible.

That it is undoubtedly expedient, and is much desired by the inhabitants of Oldham, that the Assizes for Salford hundred should be held in Manchester.

That the convenience not alone of ourselves but of the public would be greatly advanced by the proposed alteration, and a great saving of time and expense would be effected.

That your Memorialists have not heard any reason against the removal of the Assizes, which they recommend, and they are unable to conceive any; and they trust that a step so convenient as that proposed will not be much longer delayed

Your Memorialists therefore humbly pray that you will be pleased to recommend to Her Majesty that the Assizes for Salford hundred shall in future be held in Manchester.

And your Memorialists will ever pray, &c.

Kay & Clegg.	Brown & Little.
Summerscales & Tweedale.	Richd. Redfern.
Radcliffe & Murray.	John Wm. Mellor.
William Ascroft.	Geo. Clegg.
Jno. Ponsonby.	

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The Memorial of the undersigned Solicitors practising at Bury, in the county of Lancaster,—

Sheweth,

That the parish of Bury is situate in the hundred of Salford, in the southern division of the county of Lancaster, and the population thereof, at the census of 1851, was 104,506, and is increasing.

That the Assize business arising in the parish of Bury is transacted at the Assizes holden at Liverpool.

That the town of Bury is upwards of thirty-five miles distant from Liverpool, and only ten miles from Manchester.

That the Quarter Sessions business arising in the parish of Bury is with convenience to all parties concerned transacted at Salford, which place is contiguous to Manchester.

That it is the general and earnest desire of the inhabitants of Bury that the Assizes should be holden at Manchester for the despatch of Assize business arising within the hundred of Salford, and that their reasons for such desire are as follows:—

1. That there is constant railway communication between Bury and Manchester, not occupying more than half an hour in the journey, with trains early enough every morning to enable suitors, witnesses, jurymen, and attorneys to arrive in Manchester in time for the Court business, and with trains late enough to enable suitors, witnesses, jurymen, and attorneys to return home in the evening after the rising of the Court.
2. That there would be a large saving of expense thereby in railway fares, hotel charges, and other expenses.
3. That it is a very serious matter for jurymen to be summoned from Bury to Liverpool, having to attend there several days, leaving the whole management of their business to servants, whereas if the Assizes were held at Manchester their minds would be at rest, knowing, as they would, on their return home every evening, the business of the day, and being able to give their orders in a morning before leaving home.
4. That the loss of time of witnesses, from the hundred of Salford, attending the Assizes at Liverpool, especially professional men, is a grievance much and justly complained of.
5. That some of your Memorialists, from their professional knowledge, can state that the distance of the journey to Liverpool, and the expense thereof, and of staying at Liverpool, sometimes prevent prisoners from commanding the presence at the Assizes of witnesses to give evidence, as to character or facts, in their favour.

That for the reasons above mentioned your Memorialists pray that you will be pleased to take their representations into your consideration, and recommend that the Assizes for the hundred of Salford may be holden at Manchester.

And your Memorialists will ever pray, &c.

W. P. Woodcock.	P. Watson.
Thos. Grundy.	John Shearson.
Geo. Whitehead.	W. P. Woodcock, jun.
John Grundy.	Alfred Grundy.
Robt. Crossland.	

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the undersigned SOLICITORS practising at ROCHDALE in the County of LANCASTER.

SHEWETH,

That the parish of Rochdale is situate in the hundred of Salford, in the southern division of the county of Lancaster, and the population thereof, at the census of 1851, was 98,013, and is increasing.

That the Assize business arising in the parish of Rochdale is transacted at the Assizes holden at Liverpool.

That the town of Rochdale is upwards of 41 miles distant from Liverpool, and only 11 miles from Manchester.

That the Quarter Sessions business arising in the parish of Rochdale is with convenience to all parties concerned transacted at Salford, which place is contiguous to Manchester.

That it is the general and earnest desire of the inhabitants of Rochdale, that the Assizes should be holden at Manchester for the despatch of Assize business arising within the hundred of Salford, and that their reasons for such desire are as follows:

1. That there is constant railway communication between Rochdale and Manchester not occupying more than half an hour in the journey, with trains early enough every morning to enable suitors, witnesses, jurymen, and attorneys to arrive in Manchester in time for the Court business, and with trains late enough to enable suitors, witnesses, jurymen, and attorneys to return home in the evening after the rising of the Court.
2. That there would be a large saving of expense thereby in railway fares, hotel charges, and other expenses.
3. That it is a very serious matter for jurymen to be summoned from Rochdale to Liverpool, having to attend there several days, leaving the whole management of their business to servants. Whereas, if the Assizes were held at Manchester, their minds would be at rest, knowing, as they would, on their return home every evening, the business of the day, and being able to give their orders in a morning before leaving home.
4. That the loss of time of witnesses from the hundred of Salford, attending the Assizes at Liverpool, especially professional men, is a grievance much and justly complained of.
5. That some of your Memorialists, from their professional knowledge, can state that the distance of the journey to Liverpool, and the expense thereof, and of staying at Liverpool, sometimes prevent prisoners from commanding the presence at the Assizes of witnesses to give evidence as to character or facts in their favour.

That for the reasons above mentioned your Memorialists pray that you will be pleased to take their representations into your consideration, and recommend that the Assizes for the hundred of Salford may be holden at Manchester.

And your Memorialists will ever pray, &c.

H. WHITEHEAD.	JOHN HOLGATE.	M. H. WHITEHEAD.
WILLIAM HEATON.	ROBERT JACKSON.	J. H. SELLERS.
J. W. HARDMAN.	J. HARTLEY.	RICHARD SCOTT.
T. HERRAND DEARDEN.	THOMAS W. WHITEHEAD.	THOMAS ROBERTS.
J. WOODS.	JOSEPH WILLIAM HARRIS.	J. W. BOOTLY.
JOSEPH LORD.	JOHN STANDRING, jun..	WILLIAM SCOTT.
AMY MARCH.	JOHN HOLLAND.	
ZACH. MELLOR.	JAMES HALL.	

To the Honourable the Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The MEMORIAL of the undersigned SOLICITORS practising at ASHTON-UNDER-LYNE in the County of Lancaster.

SHEWETH,

That the parish of Ashton-under-Lyne is situate in the hundred of Salford, in the southern division of the county of Lancaster, and the population thereof at the Census of 1851 was 56,951.

That the Assize business arising in the parish of Ashton-under-Lyne is transacted at the Assizes holden at Liverpool.

That the town of Ashton-under-Lyne is upwards of thirty-eight miles distant from Liverpool, and only six miles from Manchester.

That the Quarter Sessions business arising in the parish of Ashton-under-Lyne is transacted at Salford, which is a great convenience to all parties interested.

That it is the general and earnest desire of the inhabitants of Ashton-under-Lyne that the Assizes should be holden at Manchester for the despatch of Assize business arising within the hundred of Salford, and that their reasons for such desire are as follows:

1. That there is constant railway communication between Ashton-under-Lyne and Manchester, not occupying more than half an hour on the journey, with trains early enough every morning to enable suitors, witnesses, jurymen, and attorneys to arrive in Manchester in time for the Court business, and with trains late enough to enable suitors, witnesses, jurymen, and attorneys to return home in the evening on the rising of the Court.
2. That there would be a large saving of expense thereby in railway fares, hotel charges, &c.
3. That it is a very serious matter for jurymen to be summoned from Ashton-under-Lyne to Liverpool, having to attend there several days, leaving the management of their business to servants; whereas, if the Assizes were held at Manchester, their minds would be at rest, knowing, as they would, on their return home every evening, the business of the day, and being able to give their orders in a morning before leaving home.
4. That the loss of time of witnesses from the hundred of Salford attending the Assizes at Liverpool, especially professional men, is a grievance much and justly complained of.
5. That some of your Memorialists, from their professional knowledge, can state that the distance of the journey to Liverpool, and the expense thereof and of staying at Liverpool, sometimes prevent prisoners from commanding the presence at the Assizes of witnesses to give evidence as to character or facts in their favour.

That for the reasons above mentioned, your Memorialists pray that you will be pleased to take their representations into your consideration, and recommend that the Assizes for the hundred of Salford may be holden at Manchester.

And your Memorialists will ever pray, &c.

H. Gartnar.	Jos. Higginbottom.	Henry Hall.
Robt. Wm. Peck.	Henry Hall, jun.	Robt. Wanz.
Henry Thos. Darnton.	John Lord.	Jas. Mellor.
Will. Buckley.	John Brooks.	
Jas. Wm. Mellor.	William Marshall.	

To the Honourable Her Majesty's Commissioners for inquiring into the present arrangements for transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales, and also into the times and places at which Assizes are holden, and as to the division of the country into Circuits.

The Memorial of the Mayor, Aldermen, and Burgesses of the Borough of Lancaster, in the County Palatine of Lancaster, under their Common Seal.

Sheweth,

That your Memorialists perceiving that the Commissioners are entrusted with the duty of inquiring "into the present arrangements for transacting the Judicial business, "Civil and Criminal, of the Superior Courts of Common Law in England and Wales, and "also into the times and places at which Assizes are holden, and as to the division of the "country into Circuits," take this opportunity of submitting to them the following observations and proposals in reference to any alteration which it may be deemed advisable to recommend in the place or places of holding the Assizes for this part of the country.

That up to a comparatively recent period the Assize business, both Civil and Criminal, for the whole of the County Palatine was conducted at Lancaster, but in the year one thousand eight hundred and thirty-five, that arising within the hundreds of West Derby, Salford, and Leyland was removed to Liverpool.

That your Memorialists have been led to believe that such change has not been attended with all the advantages to the inhabitants of the southern division generally which were expected to result from it; and that representations have been made to the Commissioners in favour of a proposition for holding an Assize at Manchester for the transaction of the business arising within the hundred of Salford, in consequence of the great and many inconveniences experienced by suitors and others, especially by those entrusted with the conduct of the legal business of the Assize at Liverpool.

That the position of and other local circumstances connected with Lancaster point out that place as especially adapted for holding an Assize, being the centre of a system of railways which diverge therefrom in various directions, as more particularly noticed hereafter, and having the County Prison, with Courts of Justice immediately connected therewith, equalled by none in the kingdom for general convenience.

That your Memorialists have been led to believe that, as compared with large and populous places, a smaller town like Lancaster possesses many advantages; for whilst sufficiently large to accommodate all, every part of it is of easy and ready access, and counsel and witnesses may be communicated with, without the difficulties, loss of time, and interruption to business which have been experienced elsewhere.

That your Memorialists, speaking from their local knowledge and acquaintance with the district, are of opinion that the public convenience would be best consulted by an extension of the Lancaster Assize district, by including therein portions of the adjoining counties of Westmoreland and Yorkshire, as exhibited on the map hereunto annexed.

That the proposed additions would comprise those portions of the county of Westmoreland which lie within the County Court districts of Ambleside, Kendal, and Kirkby Lonsdale, and those portions of the county of York which lie within the County Court districts of Kirkby Lonsdale, Settle, and Clitheroe. And your Memorialists believe that the inhabitants of the further portion of Yorkshire comprised within the County Court district of Skipton would prefer Lancaster to York, in consequence of the railway communication between that district and Lancaster being direct, whilst that to York is broken and made much more inconvenient by the change of railways and the consequent detention at Leeds.

That your Memorialists in again referring to the annexed map, desire to call the attention of the Commissioners to the railways as marked thereon, which show a direct communication with every part of the proposed district. Those marked by a single line are already in operation; that to Ulverston, shown by a dotted line, will be open for traffic during the summer of the present year; and for making the one through the Kirkby Lonsdale district, also shewn by a dotted line Bills are now before Parliament.

That with such facilities for locomotion, every portion of the proposed district will in point of time be within an hour and a half of Lancaster.

That your Memorialists, in seeking for the town of Lancaster, the favourable consideration of the Commissioners, think it not unimportant to call their attention to the large expenditure that has taken place from time to time in providing new courts, and in extending and improving the gaol, thus rendering them more efficient for the public service, and in providing suitable and proper accommodation for the Judges.

And your Memorialists therefore, in the full assurance that the various matters above set forth will receive due consideration, earnestly and respectfully urge the same upon the attention of the Commissioners. Given under the Common Seal of the said Mayor, Aldermen, and Burgesses, the twenty-eighth day of April, one thousand eight hundred and fifty-seven.

To Her Majesty's Commissioners for inquiring into the present arrangements for transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales, and also into the times and places at which Assizes are holden, and as to the divison of the country into Circuits.

The MEMORIAL of the LANCASTER LAW SOCIETY.

SHEWETH,

That prior to the year one thousand eight hundred and thirty-five the Assizes for the whole County Palatine of Lancaster were and from time immemorial had been held at Lancaster. For reasons which now no longer apply, the Assize business for the southern division of the county was, by an Order in Council, in that year removed to Liverpool. Lancaster had then no railway or telegraphic communication with any part of the county; now it possesses both on all sides of it, while the accommodation for the due reception of the Judges and their suites, and the Courts and Offices for the transaction of the Assize business, are at once the most convenient and commodious in the kingdom.

The personal experience of the members of the Lancaster Law Society, confirmed as it is by that of other members of the profession in other localities, establishes in their minds the truth, that a moderate sized town like Lancaster, while it presents ample accommodation for all who have need to resort to the Assize town, does not produce the many inconveniences which arise in a town of large extent like that of Liverpool. Among these inconveniences may be enumerated the difficulty of keeping together witnesses who, in a large town, are continually attracted from their necessary attendance in Court by objects of interest. The wide area over which the lodgings of the members of the bar are scattered, and the consequent labour and time occupied in delivering briefs, appointing and attending consultations, &c., the distance from the Courts at which fitting accommodation for the humbler class of witnesses, always the most difficult to control, is to be had; these and many other practical inconveniences which will readily suggest themselves, arising from the size and character of the place where an Assize is being held, are of the first importance in considering the eligibility of any place as an Assize town. The rapid and economical communication by railway has certainly introduced a new feature of eligibility (as places for holding Assizes) to many towns of moderate size, and to none more than to Lancaster, upon which, as upon a common centre, many lines of railway converge.

These considerations, and the local knowledge which the Lancaster Law Society possess, induce them to urge strongly upon Her Majesty's Commissioners the eligibility of Lancaster as a very convenient and central place for a new and enlarged Assize district. They propose that the Assize business for that part of the County Palatine which is now transacted at Lancaster should still be continued there; this consists of the hundreds of Blackburn, Leyland, Amounderness, and Lonsdale north and south of the sands, all of which, except Lonsdale north of the sands, find ready and immediate access to Lancaster, by the Lancaster and Preston Railway; and the parts of those hundreds the most remote from Lancaster are not distant more than an hour and a half's journey. The hundred of Lonsdale north of the sands, in which the town of Ulverstone is situate, will, in July next, be within an hour's journey to Lancaster, by the opening of the Ulverstone and Lancaster Railway. These are the portions of the County Palatine at present transacting their Assize business at Lancaster.

The Lancaster Law Society believe that great public advantage and convenience would result, if the following County Court divisions were added to the Lancaster Assize district; and in enumerating them they take the liberty of pointing out the ready access which these districts now have to Lancaster.

Name of County Court District.	Time of Journey.	Means of Access to Lancaster.
Ambleside - - -	1 H. 30 M.	Kendal and Windermere and Lancaster and Carlisle Railways.
Kendal - - - - -	0 H. 45 M.	Lancaster and Carlisle Railway.
Kirkby Lonsdale - -	1 H. 0 M.	Lancaster and Carlisle and North-western Railways.
Settle - - - - -	0 H. 45 M.	North-western Railway.
Skipton - - - - -	1 H. 30 M.	North-western Railway.
Keighley - - - -	1 H. 50 M.	Leeds and Bradford Extension and North-western Railways.
Such part of the Clitheroe District as is in Yorkshire.	1 H. 30 M.	North-western Railway.

The district thus pointed out is, for the most part, but thinly inhabited by a purely agricultural population, and notwithstanding the great apparent area of country embraced in it, would not create any very important addition to the Assize business already transacted at Lancaster.

The accompanying map will clearly establish the centrical situation of Lancaster for this district and the ready mode in which this arrangement would serve that part of Yorkshire, in which the towns of Sedbergh, Settle, Skipton, and Keighley are situated, in comparason with the present distance from and means of access to York: and it is believed that other of the County Courts districts in Yorkshire, traversed by the Leeds and Bradford Extension Railway would find a greater convenience in transacting their Assize business at Lancaster, with which they have direct railway communication, than at York, which is more distant, and with which the railway communication is less direct.

All which your Memorialists humbly submit to Her Majesty's Commissioners.

Wm. Robinson.	Wm. Dunn.	Henry Gregson.
John Hall.	Thomas Johnson.	James Halden, Secretary.
J. H. Sherson.	Geo. Wm. Woasted.	Rob. B. Peacock, President.
Thomas Lamb.	Thos. Swainson.	
Rob. Jackson.	John Sharp.	

To Her Majesty's Commissioners for inquiring into the present arrangements for transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales, and also into the times and places at which Assizes are holden, and as to the division of the county into Circuits.

The Memorial of the Inhabitants of Settle and the Neighbourhood.

Sheweth,

That Settle, in the West Riding of the county of York, is distant from York, the county town, about seventy-four miles by railway and sixty miles by road, and that the usual mode of travelling to York is by railway, through Leeds. That there is a change of carriages and rebooking of passengers going to York at Leeds, where there is always some delay, as the trains are not in communication with each other.

That the Assizes at York generally last a fortnight, and that the West Riding causes generally occupy ten days of that time.

That a great proportion of the expense of both Civil and Criminal business at York consists of the mileage allowed to professional men and witnesses, and the expense of professional men and witnesses at York waiting till their business comes on.

That Settle is only twenty-five miles by railway and twenty-seven miles by road from Lancaster, and there is direct communication by rail four times a day from Settle to Lancaster.

That the Courts at Lancaster for Assize business are much better than those at York; that the Assize business for the Northern parts of Lancashire and Yorkshire is not great, and it is probable the Assizes at Lancaster would not occupy more than three or four days.

That for the reasons above stated the saving to all parties having business at the Assizes from the neighbourhood of Settle, if such Assizes were removed to or held at Lancaster, so far as regards the district surrounding Settle, would be very great both in time and money. This is so evident that your Memorialists will not enlarge upon it.

All which your Memorialists humbly submit to Her Majesty's Commissioners.

THOS. BIRKBECK, Justice of the Peace.
ALCOCKS, BIRKBECK & Co., Bankers, Settle.
WM. ROBINSON, Justice of the Peace.
GEORGE HARTLEY, Solicitor, Settle.
C. J. GELDARD, Solicitor, Settle.
JOSIAS ATKINSON, Solicitor and Registrar of County Courts, Settle.
RICHARD H. BUCK, Solicitor, Settle.
WILLIAM HARTLEY, Solicitor, Settle.
MR. JACKSON, Solicitor, Settle.

DOCUMENTS showing the respective MERITS of LEEDS and WAKEFIELD as ASSIZE TOWNS for the WEST RIDING of the COUNTY of YORK.

ADVANTAGES of having ASSIZES at WAKEFIELD over LEEDS.

Wakefield is already the West Riding town for taking the West Riding elections (by Act of Parliament).

Also, for West Riding public meetings.

For the West Riding register of deeds (by Act of Parliament).

For the West Riding gaol.

Wakefield is the head quarters of the recently established county constabulary.

For the West Riding Treasurer's office.

For the West Riding Clerk of the Peace's office.

For the West Riding Lunatic Asylum.

Leeds is not recognized as the Riding town by any such public establishments.

The present regulations have already made Wakefield the channel for all West Riding public business, which it would be inconvenient to interfere with.

The further advantages in favour of Wakefield over Leeds are,—

The saving of expense in conveying prisoners from the gaol at Wakefield to Leeds and back.

The saving of risk in such removal.

The saving of additional turnkeys and servants during such transit.

The advantage of the governor of the gaol at Wakefield being always at his post.

Leeds has a large population of operatives and others. In times of great political excitement, on the trial of prisoners for political or other offences, it is not desirable to have the Assizes held where large bodies could be easily brought together.

Wakefield has not a large population of operatives.

It possesses large and excellent houses in excess, and having very little manufacturing going on there, the inhabitants would cultivate the accommodation of judges, counsel, officials, jurymen, witnesses, and others attending the Assizes.

Leeds having the enormous business of its staple trade, would be less likely to do so.

AS TO THE COURTS FOR THE ASSIZES.

The Wakefield large court is as large as the one at York, and larger than either of the proposed courts at Leeds.

The new second court at Wakefield is better than the third court at York.

Should a third court be required at Wakefield, there is ample room adjoining the others for erecting the same.

The removal of the Assizes to Leeds would be little or no advantage to Sheffield, Barnsley, Rotherham, Doncaster, and other populous places south and south-west of Wakefield, whilst there are no places of magnitude north and east of Leeds.

The large town of Bradford will almost be as near to Wakefield as Leeds as soon as the Bradford and Wakefield new line of railway is opened, upon the completion of which the town of Wakefield will have as good railway accommodation as any place in the West Riding.

Removal of the Assizes for the West Riding of Yorkshire.

Statement of Population of the West Riding of Yorkshire, nearest to Wakefield and Leeds respectively, taken from the Census of the Registration Districts of the Superintendent Registrars of Great Britain, 1851, published by Authority.

Registration Districts of Superintendent Registrars.

Districts nearest to Leeds.		Districts nearest to Wakefield.	
Sedburgh	4,574	Todmorden, 29,727, less 7,699 in Lancashire	22,028
Settle	13,762	Saddleworth	17,799
Clitheroe (that part in Yorkshire)	7,410	Huddersfield	123,860
Skipton	28,766	Halifax	120,958
Pateley Bridge	7,579	Dewsbury, less Morley township, given to Leeds	66,947
Ripon, 18,648, less 3,581 in the North Riding	15,067	Wakefield	48,956
Knaresborough, 27,783, less 689 in the North Riding	27,094	Pontefract	29,937
Otley	28,644	Hemsworth	8,158
Keighley	45,903	Barnsley	34,980
Bradford	181,964	Wortley	32,012
Hunslet	88,679	Ecclesall Bierlow, 37,914, less 2,966 in Derbyshire	34,948
Leeds	101,343	Sheffield	103,626
Selby (half of, the other half nearest Wakefield,) 7,715, less 1,606 in East Riding	6,109	Rotherham 33,082, less 1,123 in Derbyshire	31,959
Tadcaster	19,953	Doncaster, 34,675, less 1,341 in Nottinghamshire	33,334
Ainsty	4,660	Worksop, that part in Yorkshire	3,461
Morley township, taken from Dewsbury district	4,821	Thorne, 15,886, less 8,368 in Lincolnshire	7,500
		Goole, 13,686, less 1,090 in Lincolnshire	12,596
		Selby (half of, the other half nearest Leeds), 7,714, less 1,606 in East Riding	6,108
	586,328		739,167

Observations as to the propriety of holding the Assizes for the West Riding of Yorkshire at Wakefield instead of at York.

The division of the county of Lancaster into two districts for holding the Assizes and Gaol Deliveries has been found to be attended not only with a great saving of expense in all Civil and Criminal cases, but to be also a great convenience and saving of time to all persons who attend in such cases.

In consequence of this division the average cost of prosecutions in Lancashire for several years past is considerably less in Yorkshire, although the Court fees charged in Lancashire are considerably higher than in Yorkshire.

The adoption of a similar division of the county of York, and the advantages to prosecutors and prisoners in Criminal cases, parties to Civil causes, and to witnesses and jurymen in both classes of cases, by having the Assizes for the West Riding of Yorkshire holden at Wakefield (the central town of the Riding, and which has an excellent railway communication with all parts), instead of, as at present, at York, out of the Riding, may briefly be stated to be as follows:—

The distance to Wakefield would in most cases, and especially from the most populous districts, be very much less, thereby saving considerable expense in the transit backwards and forwards, not only of prisoners and the officials in charge of them, but also of prosecutors, parties, witnesses, and jurymen.

The diminution of distance would render it practicable to send for and procure the attendance of parties, witnesses, and attorneys at a much shorter notice, and would reduce the necessary time of their attendance to the shortest possible period.

Jurymen, and parties' witnesses and attorneys whose business had not been completed, would be able to go home and return in time for the opening of the Court on the following morning.

This would not cause any more expense than staying in the Assize town all night (as no doubt the railway companies would issue return tickets), and would be of great advantage to all persons either in a large way of business or who were accustomed personally to manage their respective trades.

The Statute 2 & 3 Anne, cap. 4., which establishes the General Register Office of Deeds relating to property in the West Riding at Wakefield, states as a reason for so doing that Wakefield is the most central town in the Riding. The offices of the Clerk of the Peace for the West Riding are also at Wakefield; and as the officials from both these offices have frequently to attend the Assizes with bulky documents, it would diminish the expense and inconvenience of such attendance, and the probability of loss, if the Assizes were held on the spot.

Wakefield is the head quarters of the recently established County Constabulary.

The offices of the West Riding Solicitor and of the West Riding Treasurer are also at Wakefield.

The central position of Wakefield was also recognized by the Reform Act, which directs that the Court for the election of Knights of the Shire for the West Riding of Yorkshire shall be holden at Wakefield.

The Common Gaol for the West Riding is at Wakefield, and has recently been much enlarged, and is now one of the largest prisons in England. One portion is leased by Government, and there are frequently 400 convicts under sentences of penal servitude confined therein. This prison being at the Assize town, would materially diminish the risk and expense of conveying prisoners. There are also two court houses at Wakefield, adjoining each other, and one of them is considerably larger than the Crown Court at York. The other is used as a subsidiary Quarter Sessions and County Court, and if found necessary, an additional court house may be erected at small cost adjoining the other two court houses, on vacant ground belonging to the Wakefield Corporation. There are also several suitable buildings at Wakefield adapted for Judges' lodgings, and there are numerous, respectable, and commodious inns and lodging houses there for the accommodation of the Bar and others who may have to attend the Assizes.

The following is an extract from the Report of the Commissioners appointed some years ago to inquire into the Common Law:—

"The extent of the county of York is so great, and both the population and business "of the West Riding so disproportionate to those of the North and East Ridings, that we "think the appointment of an additional Assize town more convenient than the city of "York to the inhabitants of the West Riding highly desirable. The place suggested for "an additional Assize is Wakefield, the advantages of which to the West Riding in pre-"ference to the city of York, and the conveniences it possesses for holding Assizes are "pointed out, and it appears to us to be very conveniently adapted to the purposes of "establishing an additional place for holding Assizes in the county of York. Signed by "J. B. Bosanquet, H. J. Stephen, E. H. Alderson, James Parke, John Patteson." And the Law Lords, as well as the House of Commons, have during the last Session been taking into consideration measures for the more frequent holding of Assizes and Sessions, and the more convenient division of counties for holding Assizes as matters of great urgency to the country at large.

It is conceived, however, that the adoption of a measure, such as having an additional Assize town, ought not to depend solely on the result of a mere calculation of loss or gain. It is a matter of important public concern that provision should be made for the easy and convenient administration of justice.

It must also be borne in mind that the great majority of prisoners are poor persons, and cannot raise sufficient money to bring witnesses from a great distance, either to speak to facts or to the previous good character of the prisoners, and the Judges at York have frequently pointed out this fact as a very great hardship upon prisoners on their trial.

The subjoined Table No. 1, shows in detail the comparative distances of the principal towns in the West Riding from York and Wakefield, with their respective populations. It will be observed that all the largest and most populous towns are much nearer Wakefield than York. The towns marked with an asterisk are those from which criminal cases have been tried at the last nine Gaol Deliveries at York. It is easy to perceive that from the relative distances from York and Wakefield of the towns whence the far greater number of criminal cases have arisen that a great saving of expense would have taken place if the Gaol Deliveries had been held at Wakefield instead of at York, more especially when it is considered (as the fact is) that about one-half of the average cost of prosecutions at York Assizes is composed of the expenses of witnesses. This Table also shows the relative number of prosecutions between the West Riding and the North and East Ridings.

The subjoined Table No. 2, shows the respective relative distances from York and Wakefield of the towns where the Jurymen have come from who were summoned to the nine Gaol Deliveries at York, commencing with July 1852, and ending with March 1855. It will be seen that by far the greater number of Jurymen resided nearer to Wakefield than York.

TABLE No. 1.

A List of the Principal Towns in the West Riding of YORKSHIRE, with their Distances from and Mode of Communication with WAKEFIELD and YORK respectively.

Principal Towns and Villages.	Distances in Miles from		Population.	Principal Towns and Villages.	Distances in Miles from		Population.
	Wakefield.	York.			Wakefield.	York.	
Aberford	13	16	737	Loversall	28	37	193
Ackworth	6	24	1,835	Marsden-in-Almondbury	22	49½	2,665
Addingham	32	51	1,623	*Meltham	15	42½	3,758
*Almondbury	15	42½	9,749	*Mirfield	10	37½	6,966
*Barnsley	11	38½	14,913	Morley	7	37	4,821
*Barnoldswick	44	63	2,828	Ossett-cum-Gawthorpe	4	31½	6,266
*Batley	15	42½	9,308	*Otley	22	27½	12,385
*Bawtry	34½	43	1,170	*Oulton-with-Woodlesford	7¾	26	1,771
*Berwick-in-Elmet	13	16	2,449	Pateley Bridge	34	21	3,127
*Bingley	27	46	15,339	*Penistone	18	45½	6,302
*Birstal (Parish of)	16	43½	36,228	*Pontefract (Borough and Parish)	9	22	11,515
*Boroughbridge	34	20	1,095	*Pudsey	18	37	11,603
Bradfield	25	52½	6,865	*Quick (included in Saddleworth)	27	54½	
*Bradford	21	40	103,778	*Rawden	19	38	2,567
Bramham	26	16	3,152	Ripley (Parish)	34	21	1,286
Castleford	7	20½	2,581	*Ripon	42½	29½	6,080
Cawood	17	9	1,195	*Rotherham	23	48	6,325
Churwell	16	35	1,103	*Rothwell	7¾	26	3,052
Clifford-cum-Boston	27	17	1,834	Saddleworth	27	54½	17,799
*Dent	62	81	1,630	*Sedbergh	62	81	2,235
*Dewsbury	6	33½	28,103	*Selby	20½	22	5,340
*Doncaster	25	35	12,052	*Settle	54½	73½	1,976
*Ecclesfield (Parish of)	25	52½	16,870	*Sheffield (Borough and Parish)	27	53	135,310
Elland	16	43½	7,225	Sherburn	14½	13	1,440
Gargrave	42	61	1,831	Shipley	23	42	3,272
Golcar	17	44½	4,212	*Skipton	38	57	5,044
*Goole	27	36	2,960	Slaithwaite	18½	46	2,852
*Halifax	19	46½	33,582	Snaith	20	30	840
*Harewood	22	26	2,413	*Soothill	5	32½	5,059
*Harrowgate	31	18½	3,678	Sowerby Bridge	20	47½	4,365
*Hatfield	19	28½	1,840	*Spofforth	29	24	3,599
Hebden Bridge	24	51½	6,000	*Swillington	7¾	25¾	607
Hemsworth	7	24	997	Swinefleet	28	36	3,071
Holmfirth	20	47½	11,313	*Tadcaster (Portion of)	22	16	1,693
Honley	18	45½	5,595	*Thorne	22	32	3,484
*Huddersfield	15	42½	30,880	Thornton	20	41	8,051
Idle	22	41	7,118	Tickhill	32	42	2,087
*Ilkley	22	27½	1,202	Todmorden	28	55½	4,532
*Keighley	30	49	18,259	*Wakefield (Borough and Parish)	—	27½	33,117
Kimberworth	25	48	6,952	Wetherby	26	21	1,494
*Knaresborough	32	16¾	5,536	Wistow	20½	22	788
*Leeds (Borough and Parish)	13	32	172,270	*Womersley	14½	24½	998
Linthwaite	19	46½	3,802	Worsbrough	14	41½	4,250
Lockwood	16½	44	5,418	*Yeadon	22	41	4,109
Lofthouse-with-Carlton	7¾	26	1,658				

N.B.—All the prosecutions at York Assizes from the West Riding for the 9 Gaol Deliveries, commencing with July 1852, and ending with March 1855, came from those places in the above Table marked with an asterisk, 43 of which are nearest Wakefield, and 6 nearest York.

Of all the above places the total population nearest Wakefield is	924,063
Ditto ditto nearest York is	35,209
At the last six Gaol Deliveries the average number of prosecutions from the West Riding was	60
Ditto ditto from the North and East Ridings	16

The twelve principal towns in the West Riding of Yorkshire, viz. :—Leeds, Bradford, Keighley, Skipton, Halifax, Huddersfield, Barnsley, Sheffield, Rotherham, Doncaster, Pontefract, and Quick or Saddleworth, are all of them much nearer Wakefield than York.

At the Yorkshire Gaol Delivery in July 1855, the number of prosecutions from the West Riding was	69
Ditto ditto from the North and East Ridings was	11

At the last two Assizes the Civil Causes were as follow :—

	West Riding.	North and East Ridings.
Spring 1855	50	19
Summer 1855	43	9

TABLE No. 2.

A TABLE showing the Places of Residence of the West Riding Jurymen who attended in nine Yorkshire Gaol Deliveries—July 1852 to March 1855—with the respective Distances of such Residences from York and Wakefield respectively. Also the number of Miles which such Jurymen travelled to and from York on such attendance, and the number of miles which they would have had to travel had such Gaol Deliveries been held at Wakefield instead of York. Also showing the number of the above Jurymen who resided nearest York and the number who resided nearest Wakefield.

PLACE OF RESIDENCE.	Summer 1852.	Winter 1852.	Spring 1853.	Summer 1853.	Winter 1853.	Spring 1854.	Summer 1854.	Winter 1854.	Spring 1855.	Total Number of Jurors.	Distance of the place of Residence from		Total number of miles travelled by Jurors in attending Assizes at York.	Total number of miles which would have been travelled by the Jurors if the Assizes had been at Wakefield.	Number of Jurors nearest to	
											York.	Wakefield.			York.	Wakefield.
Aberford	—	1	—	—	—	—	—	—	—	1	16	13	32	26	—	1
Alwoodley	—	2	—	—	—	—	—	—	—	2	26	13	104	52	—	2
Barnsley	6	3	4	5	5	—	5	3	—	31	38½	11	2,387	682	—	31
Birstal	2	—	—	2	—	4	—	—	—	8	43½	16	696	256	—	8
Bradford	4	10	7	7	13	13	13	9	12	88	40	21	7,040	3,696	—	88
Dewsbury	3	2	—	7	4	8	7	7	4	42	33½	6	2,814	504	—	42
Doncaster	2	2	2	—	7	4	7	4	3	31	35	25	2,170	1,550	—	31
Goole	—	—	—	—	—	5	—	—	—	5	36	27	360	270	—	5
Grassington	—	—	2	—	—	—	—	—	—	2	61	42	244	168	—	2
Great Ouseburn	—	2	—	2	—	—	—	—	—	4	9	36	72	288	4	—
Halifax	7	9	15	6	12	9	11	12	9	90	46½	19	8,370	3,420	—	90
Harrogate	2	—	4	—	—	—	—	—	4	10	18½	31	370	620	10	—
Heck	—	2	—	—	—	—	—	—	—	2	27	17	108	68	—	2
Holmfirth	—	—	1	—	—	—	—	4	3	8	47½	20	760	320	—	8
Huddersfield	4	9	5	8	7	5	4	3	7	52	42½	15	4,420	1,560	—	52
Ilkeley	—	2	—	—	—	—	—	—	—	2	27½	22	110	88	—	2
Ingleton	—	—	—	4	—	—	—	—	—	4	81	62	648	496	—	4
Keighley	4	2	—	—	—	5	—	4	3	18	49	30	1,764	1,080	—	18
Knaresbro'	5	3	2	—	—	—	—	6	4	20	16¾	32	670	1,280	20	—
Langfield, near Todmorden	2	—	—	2	—	—	—	—	4	8	55½	28	888	448	—	8
Leeds	10	6	14	9	22	10	21	16	16	124	32	13	7,936	3,224	—	124
Mirfield	1	—	2	3	1	—	2	2	—	11	37½	10	825	220	—	11
Normanton	2	1	—	—	—	—	—	—	—	3	24½	3	147	18	—	3
Otley	—	—	—	4	—	4	—	—	4	12	27½	22	660	528	—	12
Pannal	—	3	—	—	—	3	—	—	—	6	22	28	264	336	6	—
Pontefract	3	3	2	7	—	—	5	7	5	32	22	9	1,408	576	—	32
Pudsey	1	1	—	2	—	—	—	—	—	4	37	18	296	144	—	4
Rawden	1	1	—	1	—	—	—	—	—	3	38	19	228	114	—	3
Rotherham	1	4	1	—	—	3	—	—	2	11	48	23	,056	506	—	11
Rothwell	—	1	—	3	—	—	—	—	—	4	26	7¾	208	62	—	4
Saddleworth	—	—	—	—	—	—	3	—	—	3	54½	27	327	162	—	3
Sedbergh	—	—	—	5	—	—	—	—	—	5	81	62	810	620	—	5
Selby	—	—	4	—	—	—	5	—	—	9	22	20½	396	369	—	9
Settle	2	—	—	—	—	—	—	—	—	2	73½	54½	294	218	—	2
Sheffield	10	8	8	9	10	15	16	13	10	99	53	27	494	5,346	—	99
Sherburn	—	4	—	—	—	—	—	—	—	4	13	14½	104	116	4	—
Skipton	3	1	5	—	—	—	—	—	—	9	57	38	1,026	684	—	9
Snaith	—	1	—	—	—	—	—	—	—	1	30	20	60	40	—	1
Stansfield	—	1	—	—	—	—	—	—	—	1	55½	28	111	56	—	1
Tadcaster	—	—	—	3	—	—	—	—	—	3	16	22	96	132	3	—
Thorne	5	—	—	—	—	—	—	—	—	5	32	22	320	220	—	5
Wakefield	13	5	9	3	8	5	6	6	8	63	27½	—	3,465	—	—	63
Wath-upon-Dearne	—	—	2	—	—	—	—	—	—	2	40¾	19¾	163	79	—	2
Wetherby	—	—	2	3	—	4	—	—	—	9	21	26	378	468	9	—
	93	89	91	95	89	97	105	96	98	853	1,641½	1,090	64,999	31,110	56	797

ADVANTAGES of having ASSIZES at LEEDS over WAKEFIELD.

To the Queen's most Excellent Majesty.

The humble Petition of the HUDDERSFIELD CHAMBER OF COMMERCE,—

SHEWETH,

THAT the Assizes and gaol deliveries for the whole of Yorkshire are now held at York, which is 42 miles distant from Huddersfield aforesaid.

That the extent of the county of York is so great, and both the population and business of the West Riding are so disproportionate to those of the North and East Ridings, that a division of Yorkshire, similar to that of Lancashire, into two districts for holding Assizes and gaol deliveries, and the appointment of an additional Assize town more convenient to the inhabitants of the West Riding, would be highly desirable, and would be attended with a great saving of expense in both criminal and civil cases.

That, as your Petitioners are informed and believe, at the last gaol delivery held at York, the prosecutions from the West Riding numbered 69, whilst those from the North and East Ridings jointly numbered only 11; and that the number of civil causes from the West Riding was 43, and from the North and East Ridings jointly only 9, and that, on an average of the six preceding gaol deliveries at York, the number of prosecutions from the West Riding was 60, and from the North and East Ridings jointly only 16.

That Leeds is 27 miles nearer to Huddersfield aforesaid than York, and that the principal towns in the West Riding, namely, Sheffield, Leeds, Bradford, Wakefield, Keighley, Skipton, Halifax, Dewsbury, Rotherham, Doncaster, Pontefract, Barnsley, and Quick or Saddleworth, and by far the most populous parts of the West Riding, are much nearer Leeds than York.

That the position of Leeds would enable jurymen and others from most of the last-mentioned towns to go home every evening, and return in time for the court on the following morning, an advantage which would be of no small importance to manufacturers and tradesmen generally.

That the holding of the Assizes for the West Riding at Leeds, instead of at York, would be attended with a considerable saving of expense both in civil and criminal cases, and would enable the attendance of all requisite parties to be procured at the shortest notice, and would cause such parties to be detained as little as possible from their respective places of abode.

That the public buildings recently erected in Leeds are well adapted for the administration of justice, and your Petitioners are of opinion that if separate Assizes be held for the West Riding, it will be most convenient that they should be held at Leeds.

Your Petitioners therefore humbly pray that Your Majesty will be pleased, with the advice of Your Privy Council, to order that the Assizes and gaol deliveries for the West Riding of Yorkshire be in future held at Leeds instead of York.

And your Petitioners will ever pray, &c.

JOHN BROOKE, President.

TABULAR STATEMENT of the CAUSE LIST for the YORKSHIRE ASSIZES, from 1850 to 1856 inclusive.

		Number of Causes from the North and East Ridings.	Number of Causes from the West Riding.
1850	Spring Assizes	22	30
„	Summer „	6	43
1851	Spring „	23	51
„	Summer „	9	29
1852	Spring „	12	36
„	Summer „	19	25
1853	Spring „	18	29
„	Summer „	16	51
1854	Spring „	21	32
„	Summer „	14	36
		City of York 2	
1855	Spring „	19	50
„	Summer „	9	43
		City of York 1	
1856	Spring „	17	46
„	Summer „	10	31
	Total	219	532

SUMMARY of the CROWN CALENDARS for the YORKSHIRE GAOL DELIVERY, from 1850 to 1856 inclusive, distinguishing the NUMBER of PRISONERS from the NORTH RIDING, the EAST RIDING, and WEST RIDING; also the NUMBER from LEEDS.

	North Riding.	East Riding.	West Riding.	Other Places.	Total.	Leeds, included in West Riding.
1850 - - Spring - -	13	15	79	—	107	29
„ - - Summer -	9	11	102	—	122	26
„ - - Winter -	32	21	87	—	140	25
1851 - - Spring - -	6	12	67	—	85	18
„ - - Summer -	13	18	68	—	99	20
„ - - Winter -	16	17	113	—	146	25
1852 - - Spring -	12	8	58	—	78	20
„ - - Summer -	13	18	106	2	139	17
„ - - Winter -	17	16	90	2	125	27
1853 - - Spring -	6	2	74	—	82	24
„ - - Summer -	6	21	76	—	103	10
„ - - Winter -	13	13	83	—	109	24
1854 - - Spring -	6	4	44	—	54	5
„ - - Summer -	12	9	89	1	111	10
„ - - Winter -	10	18	77	—	105	18
1855 - - Spring -	9	1	66	—	76	7
„ - - Summer -	10	1	73	—	84	14
„ - - Winter -	15	6	95	—	116	29
1856 - - Spring -	10	3	68	—	81	14
„ - - Summer -	8	17	57	—	82	15
„ - - Winter -	10	9	106	1	126	28
Total - -	246	240	1,678	6	2,170	405

PETITION and TABLES referred to in the EVIDENCE given by MR. J. A. IKIN, Town Clerk of LEEDS.

To the Queen's Most Excellent Majesty.

The humble PETITION of the MAYOR, ALDERMEN, and BURGESSES of the BOROUGH of LEEDS, in the County of YORK, in Council assembled, on Wednesday, the 10th day of October 1855,—

SHEWETH,

THAT the attention of your Petitioners has been called to a petition from the Mayor, Aldermen, and Burgesses of Wakefield, in the West Riding of the county of York, to Your Majesty, praying that Your Majesty will be pleased, with the advice of Your Privy Council, to order that the Assizes and Gaol Deliveries for the West Riding of Yorkshire be in future held at Wakefield, or some central town in the Riding, instead of York.

That, as Representatives of Leeds, the largest, most populous, and important town in the West Riding of Yorkshire, your Petitioners have examined the case, as presented by the Petitioners from Wakefield, for the removal of the Assizes to that town, and most humbly submit, that in any alterations that may be made in the present arrangements for the Assize business of the West Riding of the county of York, the claims of Leeds may be taken into consideration by Your Majesty's Privy Council.

That the alleged grounds for the removal of the Assizes from York to Wakefield are,—

That the county of York is so great, and the population and business of the West Riding is so disproportioned to those of the North and East Ridings, that a division into two districts, as in Lancashire, would be attended with a great saving of expense, both in Criminal and Civil cases.

That the Prosecutions and Civil business from the West Riding are much greater than from the North and East Ridings.

That the number of Jurors is in like degree larger from the West Riding than from the North and East Ridings, and that Prosecutors, Witnesses, and Jurors have to attend from places nearer to Wakefield than York.

In Statements and Tables that have been circulated by the Petitioners from Wakefield, and which will no doubt be presented to Your Majesty's Privy Council, it is shown that, with respect to the parties interested as Prosecutors and Jurors, there would be a great saving of time and expense in holding the Assizes at Wakefield instead of York.

But an examination of these Tables proves that Leeds is more central than Wakefield, and there is annexed to this Petition the Table (No. 1), as prepared by the Petitioners from Wakefield, with a column (printed in italic) showing the distance from Leeds, as well

as from Wakefield and York, of some principal towns and villages, which proves that Leeds is more central than Wakefield. The total distances in miles from Leeds being 1,728½, against 1,945½ from Wakefield.

But inasmuch as the Table from Wakefield shows only a population of 959,272, and does not present the population of all the principal towns and villages in the West Riding, there is also annexed to this Petition another Table (No. 2), showing the principal towns and villages in the Riding and a population of 1,103,567, which accounts for a population of 144,295 more than the Wakefield Table (No. 1). The total distances in miles shown in the Table (No. 2) from Leeds being 2,491, against Wakefield 3,040½.

An examination of the Table (No. 3), published by the Wakefield Petitioners, as to the Jurors, gives a similar result. By adding a column for Leeds (printed in *italics*), it proves the number nearest to Leeds to be 413, to Wakefield 409; and the number of miles travelled being from Leeds only 26,867, as against Wakefield 31,110.

Therefore, as to the distance from the great centres of population, Leeds is proved to be more central than Wakefield; and all the arguments for removing the Assizes from York to Wakefield, based on a saving in distance, apply more strongly to Leeds than to Wakefield.

It is alleged in favour of Wakefield, that it has court houses, a prison, and means of accommodating the Judges, Counsel, Jurymen, Witnesses, and others attending the Assizes.

Here again the claims of Leeds are humby submitted for Your Majesty's consideration. As to the courts, there is already within the borough of Leeds the existing court house, which in case of necessity might be advantageously used as a subsidiary court; and your Petitioners are now erecting a most commodious building as a town hall, in which the accommodation provided for holding the Assizes comprises two courts, one for the Civil, and the other for the Criminal business; each court is 54 feet long, by 47 feet wide, and 43 feet high: adjoining these courts are spacious rooms for the Judges, Barristers, Solicitors, Jurors, and Witnesses, with the necessary conveniences attached. The courts, and nearly all these rooms, are on the ground floor. Immediately underneath them (on the basement floor) is a prison and police establishment; the former having a stone staircase communicating directly with the dock in the Criminal Court. The entrance to the courts is at the north end of the building, and during the Assizes this entrance need not be used for any other purpose; and it is arranged that the whole of this portion of the building can be kept entirely distinct from the rest, if requird. The large hall adjoining the courts, and in the same building, will be one of the largest and most handsome in the kingdom, and will be found extremely convenient to those frequenting the courts.

In fitting up these courts, your Petitioners have had communication with a gentleman delegated by the Northern Bar, and at his suggestion, arising from the failure at Liverpool, it has been resolved to fit up the courts, in the first instance, with furniture that can be removed, so that the the wants and comforts of the Judges, Bar, and Practitioners, may be met, when experience shall have pointed out the most convenient permanent arrangement.

With respect to prison accommodation, your Petitioners in 1844 erected a large and commodious prison, capable of containing upwards of 300 prisoners; the Justices of the Borough now occupy a vacant portion of it with convicts, under a contract with the Government, and on vacant ground adjoining to the prison, it is capable of great extension at a reasonable cost.

With respect to the means of accommodating the Judges, the Bar, Jurymen, and Witnesses, the size and wealth of the town of Leeds afford a sufficient guarantee.

It is urged that Wakefield possesses a Register Office for Deeds, and the Offices of the West Riding Solicitors and West Riding Treasurer; but the business of the Gaol Delivery and Assize is not transacted in these offices. As to the recognition of the central position of Wakefield in the Reform Act, Leeds has been since recognized as the centre of the largest commercial district in the North of England, by the establishment there of the two Bankruptcy Courts for the Leeds district, whose jurisdiction extends over the whole of the county of York, and portions of Lincolnshire, Nottinghamshire, and Lancashire.

It has been objected, that from the large population of operatives and others in Leeds, it is an improper place in which to hold the Assizes, to which it is answered that the population of Leeds is exceedingly orderly and quiet. There is an efficient and well-organized police in Leeds; and if this objection on account of density of population is to prevail, it would apply to Liverpool, and even to the administration of justice in London.

The borough of Leeds alone has a population of nearly 190,000 inhabitants. The Criminal business at the Assizes at York from the borough of Leeds alone is about one-sixth of the whole.

The staple trade of Leeds and the surrounding towns, and the district around Bradford, and the Leeds Courts of Bankruptcy, furnish far the largest portion of the Civil business to the Assize Court at York.

The Criminal and Civil business from Wakefield is comparatively small.

The court and prison accommodation which Leeds has provided, and which is now in the course of completion, will be at least equal to any in this country; and as representatives of the most central, and also the principal town in the West Riding of Yorkshire,

Your Petitioners humbly pray, that Your Majesty will be pleased, with the advice of Your Privy Council, to hear and inquire into the claims of Leeds before any order be made, that the Assizes and Gaol Deliveries for the West Riding of Yorkshire be held at Wakefield instead of York.

L.S.

TABLE No. 1.

A LIST of the Principal TOWNS and VILLAGES in the WEST RIDING of YORKSHIRE, with their DISTANCES from WAKELILD and YORK respectively, with a Column inserted in Italics, showing the Distances from Leeds.

Principal Towns and Villages.	Distances in Miles from			Population at the last Census.	Principal Towns and Villages.	Distances in Miles from			Population at the last Census.
	Leeds.	Wakefield.	York.			*Leeds.*	Wakefield.	York.	
					Brought Forward -	*890½*	1,031¾	1,770¾	614,036
Aberford - -	*10*	13	16	737	Meltham - - -	*21*	15	42½	3,758
Ackworth - -	*16*	6	24	1,835	Mirfield - - -	*13*	10	37½	6,966
Addingham - -	*19*	32	51	1,623	Morley - - -	*4*	7	37	4,821
Almondbury - -	*18*	15	42½	9,749	Ossett-cum-Gawthorpe	*11*	4	31½	6,266
Barnsley - -	*19*	11	38½	14,913	Otley - - -	*10*	22	27½	12,385
Barnoldswick - -	*35*	44	63	1,170	Oulton-with-Woodlesford.	*5*	¾	26	1,771
Batley - - -	*8*	15	42½	2,828	Pateley Bridge - -	*28*	34	21	3,127
Bawtry - - -	*37*	34½	43	9,308	Penistone - - -	*29*	18	45½	6,302
Berwick-in-Elmet -	*8*	13	16	2,449	Pontefract (Brrough and Parish).	*13*	9	22	11,515 11,603
Bingley - - -	*16*	27	46	15,339	Pudsey - - -	*6*	18	37	
Birstal (Parish of) -	*7*	16	43½	36,228	Quick (included in Saddleworth).	*28*	27	54½	—
Boroughbridge -	*25*	34	20	1,095	Rawden - - -	*7*	19	38	2,567
Bradfield - - -	*28*	25	52½	6,865	Ripley (Parish) - -	*19*	34	21	1,286
Bradford - - -	*10*	21	43	103,778	Ripon - - -	*27*	42½	29½	6,080
Bramham - - -	*10*	26	16	3,152	Rotherham - - -	*31*	23	48	6,325
Castleford - - -	*10*	7	20½	2,581	Rothwell - - -	*4*	7¾	26	3,052
Cawood - - - -	*19*	17	9	1,195	Saddleworth - - -	*28*	27	54½	17,799
Churwell - - -	*3*	16	35	1,103	Sedbergh - - -	*60*	62	81	2,235
Clifford-cum-Boston	*13*	27	17	1,834	Selby - - - -	*20*	20½	22	5,340
Dent - - - -	*51*	62	81	1,630	Settle - - - -	*40*	54½	73½	1,976
Dewsbury - -	*8*	6	33½	28,103	Sheffield (Borough and Parish).	*33*	27	53	135,310
Doncaster - -	*28*	25	35	12,052	Sherburn - - -	*16*	14½	13	1,440
Ecclesfield (Parish of)	*28*	25	52½	16,870	Shipley - - -	*10*	23	42	3,272
Elland - - -	*16*	16	43½	7,225	Skipton - - -	*25*	38	57	5,044
Gargrave - - -	*29*	42	61	1,831	Slaithwaite - -	*21*	18½	46	2,852
Golcar - - -	*21*	17	44½	4,212	Snaith - - -	*25*	20	30	840
Goole - - - -	*36*	27	36	2,960	Soothill - - -	*7*	5	32½	5,059
Halifax - - -	*17*	19	46½	33,582	Sowerby Bridge - -	*20*	20	47½	4,365
Harewood - - -	*9*	22	26	2,413	Spofforth - - -	*15*	29	24	3,599
Harrogate - -	*15½*	31	18½	3,678	Swillington - - -	*6*	7¾	25¾	607
Hatfield - - -	*32*	19	28½	1,840	Swinefleet - -	*38*	28	36	3,071
Hebden Bridge - -	*24*	24	51½	6,000	Tadcaster (Portion of)	*18*	22	16	1,693
Hemsworth - -	*16*	7	24	997	Thorne - - -	*30*	22	32	3,484
Holmfirth - - -	*22*	20	47½	11,313	Thornton - - -	*14*	20	41	8,051
Honley - - -	*19*	18	45½	5,595	Tickhill - - -	*35*	32	2	2,087
Huddersfield - -	*16*	15	42½	30,880	Todmor - - -	*30*	28	5 ½	4,532
Idle - - - -	*9*	22	41	7,118	Wakefield (Borough and Parish).	*10*	—	27½	33,117
Ilkley - - - -	*16*	22	27½	1,202	Wetherby - - -	*12*	26	21	1,494
Keighley - - -	*19*	30	49	18,259	Wistow - - -	*21*	20½	22	788
Kimberworth - -	*33*	25	48	6,952	Womersley - - -	*18*	14½	24½	998
Knaresborough -	*18*	32	16¾	5,536	Worsbrough - -	*22*	14	41½	4,250
Leeds (Borough and Parish).	—	13	32	172,270*	Yeadon - - -	*8*	22	41	4,109
Linthwaite - -	*19*	19	46½	3,802					
Lockwood - -	*17*	16½	44	5,418					
Lofthouse-with-Carlton	*5*	7¾	26	1,658					
Loversall - -	*33*	28	37	193					
Marsden-in-Almondbury.	*23*	22	49½	2,665					
Carried Forward -	*890½*	1,031¾	1770¾	614,036	*Total* -	1,728½	1,945½	3,317½	959,272

* The present population of Leeds is about 190,000.

TABLE No. 2.

A List of the PRINCIPAL TOWNS and VILLAGES in the WEST RIDING of YORKSHIRE, with their DISTANCES from LEEDS, WAKEFIELD, and YORK respectively.

	Distances in Miles from			Population.
	Leeds.	Wakefield.	York.	
Aberford	10	13	16	737
Ackworth	16	6	24	1,835
Addingham	19	32	51	1,623
Aldborough	24	33	19	2,463
Almondbury	18	15	42½	9,749
Baildon	11	25	35	3,700
Barnsley	19	11	38½	14,913
Barnoldswick	35	44	63	2,828
Batley	8	15	42½	9,308
Bawtry	37	34½	43	1,170
Bentham	51	65½	84½	2,143
Berwick-in-Elmet	8	13	16	2,449
Bingley	16	27	46	15,339
Birstall (Parish)	7	16	43½	36,228
Bolton by Bowland	40	53	72	962
Boroughbridge	25	34	20	1,095
Bradfield	28	25	52½	6,865
Bradford	10	27	40	103,778
Bramham	10	26	16	3,152
Carlton, near Skipton	27	40	59	1,333
Castleford	10	7	20½	2,581
Cawood	19	17	9	1,195
Churwell	3	16	35	1,103
Clapham	46	60½	79½	914
Clayton	13	24	43	5,052
Clifford-cum-Boston	13	27	17	1,834
Dent	51	62	81	1,630
Dewsbury	8	6	33½	28,103
Doncaster	28	25	35	12,052
Ecclesfield (Parish)	28	25	52½	16,870
Eccleshill	7	34	21	3,700
Elland	16	16	43½	7,225
Gargrave	29	42	61	1,831
Gildersome	5	9	29	2,126
Gisburn (Parish)	36	49	68	1,976
Grassington	34	47	66	1,138
Grindleton	42	55	74	1,127
Golcar	21	17	44½	4,212
Goole	36	27	36	2,960
Guiseley	10	24	34	2,572
Halifax	17	19	46½	33,582
Hampsthwaite	18	31	23	2,494
Harewood	9	22	26	2,413
Harrogate	15½	31	18½	3,678
Hatfield	32	19	28½	1,840
Haworth	20	31	50	6,848
Hebden Bridge	24	24	51½	6,000
Hemsworth	16	7	24	997
Heptonstall	25	27	54½	4,177
Hipperholme-cum-Brighouse.	15	19	39	6,091
Holmfirth	22	20	47½	11,313
Honley	19	18	45½	5,595
Horsforth	5	18	29	4,584
Huddersfield	16	15	42½	30,880
Idle	9	22	41	7,118
Ilkley	16	22	27½	1,202
Ingleton	50	64½	83½	1,391
Keighley	19	30	49	18,259
Kettlewell	40	53	72	607
Kildwick (Parish)	24	35	54	11,712
Kippax	8	10	23½	2,339
Kimberworth	33	25	48	6,952
Kirkheaton	13	12	39½	3,500
Knaresborough	18	32	16¾	5,536
Leeds	—	13	32	172,270
Carried forward	1,357½	1,758	2,719¾	673,249

	Distances in Miles from			Population.
	Leeds.	Wakefield.	York.	
Brought forward	1,357½	1,758	2,719¾	673,249
Linthwaite	19	19	46½	3,802
Lockwood	17	16½	44	5,418
Lofthouse with Carlton	5	7¾	26	1,658
Long Preston	36	50½	69½	1,341
Loversall	33	28	37	193
Marsden in Almondbury	23	22	49½	2,665
Meltham	21	15	42½	3,758
Mirfield	13	10	37½	6,966
Morley	4	7	37	4,821
Morton (East and West)	19	30	43	1,750
North Bierley	12	19	36	11,000
Northowram	15	21	39	15,285
Ossett-cum-Gawthorpe	11	4	31½	6,266
Otley	10	22	27½	12,385
Oulton with Woodlesford.	5	7¾	26	1,771
Ovenden	18½	20½	42½	12,738
Pateley Bridge	28	34	21	3,127
Penistone	29	18	45½	6,302
Pontefract	13	9	22	11,515
Pudsey	6	18	37	11,603
Raistrick	16	20	40	4,316
Rawdon	7	19	38	2,567
Ripley	19	34½	21	1,286
Ripon	27	42	29½	6,080
Rotherham	31	23¾	48	6,325
Rothwell	4	7	26	3,052
Saddleworth	28	27	54½	17,799
Sedbergh	60	62	81	2,235
Selby	20	20½	22	5,340
Settle	40	54½	73½	1,976
Sheffield	33	27	53	135,310
Shelf	14½	23½	38½	3,419
Sherburn	16	14½	13	1,440
Shipley	10	23	42	3,272
Skipton	25	38	57	5,044
Slaithwaite	21	18½	46	2,852
Snaith	25	20	30	840
Soothill	7	5	32½	5,059
Southowram	19	19	43	7,380
Sowerby Bridge	20	20	47½	4,365
Spofforth	15	29	24	3,599
Stansfield	27	30	54½	7,627
Swillington	6	7	25¾	607
Swinefleet	38	28¾	36	3,071
Tadcaster (East and West).	18	22	16	2,527
Thorne	30	22	32	3,484
Thornton, near Bradford	14	20	41	8,051
Thornton in Craven	32½	41	60	2,202
Tickhill	35	32	42	2,087
Todmorden	30	28	55½	4,532
Wakefield	10	—	27½	33,117
Wetherby	12	26	21	1,494
Wilsden	17	28	41	3,454
Wistow	21	20½	22	788
Womersley	18	14½	24½	998
Worsbrough	22	14	41½	4,250
Yeadon	8	22	41	4,109
Total	2,491	3,040½	4,921½	1,103,567

Of the above Places the Population nearest Leeds is - - - - - - 633,957
Of the above Places the Population nearest Wakefield is - - - - - 425,982
Of the above Places the Population at equal Distances from Leeds and Wakefield is 28,772
Of the above Places the Population nearest York is - - - - - - 14,856

Total - - - 1,103,567

At the Census of 1851 the Population of the West Riding was 1,315,896.

The above Table accounts for a Population of 144,295 more than the Wakefield Table No. 1.

TABLE No. 3.

A TABLE showing the Places of Residence of the West Riding Jurymen who attended the nine Yorkshire Gaol Deliveries—July 1852 to March 1855—with the respective distances of such Residences from York, Wakefield, and Leeds, (the latter in Italics) respectively. Also the number of Miles which such Jurymen travelled to and from York on such attendance, and the number of Miles which they would have had to travel had such Gaol Deliveries been held at Wakefield, or at Leeds, instead of York. Also showing the number of the above Jurymen who resided nearest York, and the number who resided nearest Wakefield and Leeds respectively.

Place of Residence.	Summer 1852.	Winter 1852.	Spring 1853.	Summer 1853.	Winter 1853.	Spring 1854.	Summer 1854.	Winter 1854.	Spring 1855.	Total Number of Jurors.	Distance of the place of Residence from			Total Number of miles travelled by Jurors in attending Assizes at York.	Total Number of miles which would have been travelled by the Jurors if the Assizes had been at Wakefield.	*Total Number of miles which would have been travelled by the Jurors if the Assizes had been at Leeds.*	Number of Jurors nearest to		
											York.	Wakefield.	*Leeds.*				York.	Wakefield.	*Leeds.*
Aberford	—	1	—	—	—	—	—	—	—	1	16	13	*10*	32	26	*20*	—	—	*1*
Alwoodley	—	2	—	—	—	—	—	—	—	2	26	13	*5½*	104	52	*22*	—	—	*2*
Barnsley	6	3	4	5	5	—	5	3	—	31	38½	11	*19*	2,387	682	*1,178*	—	31	—
Birstal	2	—	—	2	—	4	—	—	—	8	43½	16	*7*	696	256	*112*	—	—	*8*
Bradford	4	10	7	7	13	13	13	9	12	88	40	21	*10*	7,040	3,696	*1,760*	—	—	*88*
Dewsbury	3	2	—	7	4	8	7	7	4	42	33½	6	*8*	2,814	504	*672*	—	42	—
Doncaster	2	2	2	—	7	4	7	4	3	31	35	25	*28*	2,170	1,550	*1,736*	—	31	—
Goole	—	—	—	—	—	5	—	—	—	5	36	27	*36*	360	270	*360*	—	5	—
Grassington	—	—	2	—	—	—	—	—	—	2	61	42	*34*	244	168	*136*	—	—	*2*
Great Ouseburn	—	2	—	2	—	—	—	—	—	4	9	36	*21*	72	288	*168*	4	—	—
Halifax	7	9	15	6	12	9	11	12	9	90	46½	19	*17*	8,370	3,420	*3,060*	—	—	*90*
Harrogate	2	—	4	—	—	—	—	—	4	10	18½	31	*15⅓*	370	620	*310*	—	—	*10*
Heck	—	2	—	—	—	—	—	—	—	2	27	17	*22*	108	68	*88*	—	2	—
Holmfirth	—	—	1	—	—	—	—	4	3	8	47½	20	*22*	760	320	*352*	—	8	—
Huddersfield	4	9	5	8	7	5	4	3	7	52	42½	15	*16*	4,420	1,560	*1,664*	—	52	—
Ilkeley	—	2	—	—	—	—	—	—	—	2	27½	22	*16*	110	88	*64*	—	—	*2*
Ingleton	—	—	—	4	—	—	—	—	—	4	81	62	*50*	648	496	*400*	—	—	*4*
Keighley	4	2	—	—	—	5	—	4	3	18	49	30	*19*	1,764	1,080	*684*	—	—	*18*
Knaresbro'	5	3	2	—	—	—	—	6	4	20	16¾	32	*18*	670	1,280	*720*	20	—	—
Langfield, near Todmorden	2	—	—	2	—	—	—	—	4	8	55½	28	*30*	888	448	*480*	—	8	—
Leeds	10	6	14	9	22	10	21	16	16	124	32	13	—	7,936	3,224	—	—	—	*124*
Mirfield	1	—	2	3	1	—	2	2	—	11	37½	10	*13*	825	220	*286*	—	11	—
Normanton	2	1	—	—	—	—	—	—	—	3	24½	3	*10*	147	18	*60*	—	3	—
Otley	—	—	—	4	—	4	—	—	4	12	27⅓	22	*10*	660	528	*240*	—	—	*12*
Pannal	—	3	—	—	—	3	—	—	—	6	22	28	*13*	264	336	*156*	—	—	*6*
Pontefract	3	3	2	7	—	—	5	7	5	32	22	9	*13*	1,408	576	*832*	—	32	—
Pudsey	1	1	—	2	—	—	—	—	—	4	37	18	*6*	296	144	*48*	—	—	*4*
Rawden	1	1	—	1	—	—	—	—	—	3	38	19	*7*	228	114	*42*	—	—	*3*
Rotherham	1	4	1	—	—	3	—	—	2	11	48	23	*31*	1,056	506	*682*	—	11	—
Rothwell	—	1	—	3	—	—	—	—	—	4	26	7¾	*4*	208	62	*32*	—	—	*4*
Saddleworth	—	—	—	—	—	—	3	—	—	3	54½	27	*28*	327	162	*168*	—	3	—
Sedbergh	—	—	—	5	—	—	—	—	—	5	81	62	*60*	810	620	*600*	—	—	*5*
Selby	—	—	4	—	—	—	5	—	—	9	22	20⅓	*20*	396	369	*360*	—	—	*9*
Settle	2	—	—	—	—	—	—	—	—	2	73⅓	54½	*40*	294	218	*160*	—	—	*2*
Sheffield	10	8	8	9	10	15	16	13	10	99	53	27	*33*	10,494	5,346	*6,534*	—	99	—
Sherburn	—	4	—	—	—	—	—	—	—	4	13	14½	*16*	104	116	*128*	4	—	—
Skipton	3	1	5	—	—	—	—	—	—	9	57	38	*25*	1,026	684	*450*	—	—	*9*
Snaith	—	1	—	—	—	—	—	—	—	1	30	20	*25*	60	40	*50*	—	1	—
Stansfield	—	1	—	—	—	—	—	—	—	1	55½	28	*27*	111	56	*54*	—	—	*1*
Tadcaster	—	—	—	3	—	—	—	—	—	3	16	22	*18*	96	132	*108*	3	—	—
Thorne	5	—	—	—	—	—	—	—	—	5	32	22	*30*	320	220	*300*	—	5	—
Wakefield	13	5	9	3	8	5	6	6	8	63	27⅓	—	*10*	3,465	—	*1,260*	—	63	—
Wath-upon-Dearne	—	—	2	—	—	—	—	—	—	2	40¾	19¾	*28¾*	163	79	*115*	—	2	—
Wetherby	—	—	2	3	—	4	—	—	—	9	21	26	*12*	378	468	*216*	—	—	*9*
	93	89	91	95	89	97	105	96	98	853	1,641½	1,020	*833¾*	65,099	31,110	*26,867*	31	409	*413*

CHAMBER OF COMMERCE at LEEDS, the 18th February 1857.

The QUESTION of REMOVAL of the WEST RIDING ASSIZES from YORK to LEEDS was brought under the consideration of the Council, and

IT WAS RESOLVED UNANIMOUSLY,

That in the opinion of this Chamber the suggested removal is most desirable.

The borough of Leeds, by its population and wealth, by the great variety and importance of its manufactures, is *de facto* the metropolis of the West Riding.

The intelligence of its industrial population, the number and value of its public institutions, the order and decorum, which as a rule characterize the masses of its inhabitants, the admirable adaptation of its new public buildings to the administration of justice, all prove that the Assizes for the West Riding might, with safety and great advantage to the community, be removed to Leeds.

The whole manufacturing population of an area of 30 square miles between the rivers Aire and Calder are for the most part employed by the business, energy, and capital of Leeds, and as a consequence find in Leeds a common centre.

The disadvantages to the densely populated districts of Leeds, Bradford, Halifax, Huddersfield, Pudsey, Birstal, Heckmondwike, Farsley, Calverley, Yeadon, Guiseley, Rawdon, Horsforth, and other populous districts of the West Riding, in being compelled to have their Assizes held at the extreme verge of the Riding are manifest.

The Council of the Leeds Chamber of Commerce confidently submit that far more intelligent juries would be selected from the inhabitants of Leeds than from a similar class in York, whereby the administration of justice would be served.

That the expense, the inconvenience, and annoyance to which all classes having business at the Assizes are now subject would be materially lessened by the proposed alteration, and therefore they are of opinion that a removal of the West Riding Assizes from York to Leeds would be in every respect a most advantageous change.

Signed on behalf of the Council of the Leeds Chamber of Commerce,

DARNTON LUPTON, Vice President.

To the Queen's most Excellent Majesty.

The Humble PETITION of the SOLICITORS and ATTORNIES, MEMBERS of the LEEDS LAW SOCIETY, in the WEST RIDING of the County of YORK,—

SHEWETH,

That your Petitioners heartily concur in the Petition adopted by the Mayor, Aldermen, and Burgesses of the borough of Leeds, and since presented to Your Majesty, praying, for the reasons therein contained, that the Assizes and Gaol Deliveries in and for the West Riding of Yorkshire may be held at Leeds aforesaid.

That your Petitioners, as Attornies having Civil or Criminal business in the West Riding of Yorkshire which at present is disposed of at the Assize and Gaol Deliveries at the castle of York, and having great experience and knowledge of facts in connexion with the Criminal and Judicial business of the said Riding, humbly represent to Your Majesty that a very large proportion of the number of suitors, witnesses, and jurors whose residences and places of business are at considerable distances from the castle of York, will, in regard both to convenience and economy, derive considerable advantage by the removal of the Assizes and Gaol Delivery from York to Leeds, which latter place is in a central part of the West Riding of Yorkshire, amidst and contiguous to a dense population engaged in manufacturing, commercial, and mercantile pursuits, and from which districts a vast proportion of the Criminal and Civil business of the Assizes and Gaol Deliveries proceeds.

That in addition to these reasons, and from the same causes, it is manifest to your Petitioners that the holding of the Gaol Deliveries at Leeds will necessarily be productive of a great saving of the public money, by reducing in a very considerable number of instances the travelling and tavern expenses of persons and their expenses for loss of time in attending the Gaol Deliveries as prosecutors, witnesses, and solicitors concerned in the administration of the Criminal Law.

That your Petitioners do not consider that the removal to Leeds of the Assizes and Gaol Deliveries for the said Riding will be any personal boon or advantage to themselves, inasmuch as, when engaged in Assize business, it is generally felt that their personal convenience and advantage are best consulted by having to go to some distance from their ordinary offices and places of business, so as to detach themselves for the time from the daily claims upon them by their clients and others, but your Petitioners advocate the question from a sincere conviction that public convenience, advantage, and economy will be essentially consulted by holding the Assizes and General Gaol Deliveries for the West Riding of the county of York in the town of Leeds aforesaid.

Your Memorialists therefore humbly pray that Your Majesty will be pleased to make such order and disposition that the Assizes and General Gaol Deliveries in and for the West Riding of the county of York may be held at Leeds accordingly.

Signed on the behalf and at the request of the Members of the Leeds Law Society,

EDWIN EDDISON, Honorary Secretary.

To the Queen's most Excellent Majesty.

The humble PETITION of the JUSTICES of the PEACE for the BOROUGH of LEEDS, in the WEST RIDING of the County of YORK,—

SHEWETH,

That your Petitioners understand that Your Majesty, by and with the advice of Your Privy Council, has under consideration the expediency or otherwise of holding the Assizes and General Gaol Deliveries for the West Riding of Yorkshire in some other district within that Riding than the castle of York.

That your Petitioners desire to express to Your Majesty their conviction that the mercantile, manufacturing, and commercial interests, and those of the vast population generally, of the West Riding of Yorkshire will be materially consulted by holding the Assizes and General Gaol Deliveries for that important district of the kingdom in some central part thereof, at or near to the locality where the population abounds, and where the suitors, jurors, witnesses, and others are necessarily resident.

That such an arrangement, both with respect to the Civil and Criminal business of the Assizes and Gaol Deliveries, will essentially lead to the despatch of business, with economy of time and expense to the numerous persons whose duties or business may render their attendance at the Assizes indispensable.

That the borough of Leeds, and the immediate neighbourhood thereof, comprise a population of upwards of 300,000; that the communication between Leeds and every part of the West Riding of Yorkshire, and more especially with the most populous districts thereof, is concentrated, frequent, and most efficient, so that the population of the West Riding of Yorkshire generally may be rapidly conveyed from every part of the Riding to the town of Leeds.

That the town of Leeds abounds with hotels, inns, and other requisite accommodation for persons whose avocations may call them to the Assizes, and there is now in course of erection a magnificent town-hall, in which special accommodation will be provided for the convenient holding of the Assizes and Gaol Deliveries for the West Riding of Yorkshire; and your Petitioners feel assured that the town of Leeds—from its locality and population, its proximity to other large and populous towns in the Riding, the ready and convenient access from every part of the Riding with the town of Leeds by the existing railway arrangements—will form a central, convenient, and desirable district for holding the Assizes and Gaol Deliveries in and for the West Riding of Yorkshire, by which a great saving of time and money will be ensured.

Your Petitioners therefore humbly pray Your Majesty to cause an inquiry into the facts and circumstances referred to, and that Your Majesty, by and with the advice of Your Privy Council, will be pleased to order that the Assizes and Gaol Deliveries in and for the West Riding of Yorkshire be held in the town of Leeds.

JOHN BOTTERILL, Mayor.	JOSH. BATESON.
RALPH MARKLAND.	RICHARD HARRISON.
CHARLES CHADWICK.	JOHN ELLERSHAM, jun.
JNO. HOPE SHAW.	CHAS. G. MACLEA.
M. COOPER.	D. W. NELL.
JAMES KITSON.	JOHN CROFTS.
JOSEPH AUSTIN.	HENRY CHIRLEY.
JOHN WILSON.	P. FAIRBAIRN.

To the Common Law Judicial Business Commissioners.

The respectful MEMORIAL of the MAYOR, ALDERMEN, and BURGESSES of the BOROUGH of KINGSTON-UPON-HULL, in Common Council assembled,

SHEWETH,

That your Memorialists have been informed that a Commission has been issued for inquiring into the present arrangements for transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales, and also as to the times and places at which Assizes are holden, and as to the division of the country into Circuits.

That by a charter of Edward I., and by subsequent charters of confirmation, the town of Hull, which is also a county of itself, was entitled to have Assizes held at the said borough of Kingston-upon-Hull.

That from about the year one thousand seven hundred and forty-five, up to the year one thousand seven hundred and ninety-four, Assizes were held at the said Borough of Kingston-upon-Hull; but from the last-mentioned year the Assizes ceased to be held at Kingston-upon-Hull aforesaid, and the Assize business of the said borough has been from that time disposed of at York.

That the borough of Kingston-upon-Hull and the port thereof have within the last fifty years greatly increased, and are yearly increasing, and the port is admitted to be the third port in the kingdom in size and importance.

That Hull hath four distinct lines of railway, communicating into Holderness, the East Riding of Yorkshire, Selby, and the parts of Lincolnshire, while it hath ferry boats and steam boats plying upon the river Humber to the various northern parts of Lincolnshire, to which it lies contiguous.

That by reason whereof Hull hath become far more central for a large district of Yorkshire than York, and far more convenient for the northern parts of Lincolnshire than Lincoln.

Your Memorialists therefore humbly beg you will be pleased to recommend that the Assizes be restored to Hull; and that the Assize business arising in the port and borough of Kingston-upon-Hull and the country adjacent, both in Yorkshire and Lincolnshire, may be held at Kingston-upon Hull aforesaid, at the allotted periods, or at such more frequent periods as may be ultimately determined on.

And your Memorialists will ever pray, &c.

Given under the Common Seal of the Mayor, Aldermen, and Burgesses of the borough of Kingston-upon-Hull, the Seventh day of May 1857.

WILL. HENRY MOSS, Mayor. (Seal.)

To the Right Honourable the Commissioners appointed by Her Majesty for inquiring into the Time and Manner of holding the Circuits, and for other purposes.

The MEMORIAL of the MAYOR, ALDERMEN, and COUNCILLORS of the BOROUGH of WISBECH, in Council assembled,—

SHEWETH,

THAT for many centuries there was a separate criminal and civil jurisdiction for the Isle of Ely, and a Chief Justice, Chief Bailiff, and other functionaries were appointed for purposes of public justice. In the year 1836, this separate and peculiar jurisdiction was abolished, and the Isle of Ely was united with the county of Cambridge for purposes of criminal judicature.

That the borough of Wisbech has no separate quarter sessions of the peace.

That the borough is situated about forty miles from the county town of Cambridge, where the Asizes are held.

That all jurymen, witnesses, attorneys, and other parties have to travel to the Assize there, much inconvenience and expense is consequently occasioned, and your Memorialists are of opinion that such inconvenience and expense might be avoided if the wishes of your Memorialists were carried into effect.

Your Memorialists therefore beg to lay before your Honourable Commissioners these circumstances of the case, and to express their opinion that it would tend greatly to the convenience of the public, and be a great saving of expense to the Consolidated Fund, if an arrangement were made that Her Majesty's Judges, or one of them, should, on each Assize being held, continue the circuit to the town of Wisbech, and sit there for the trial of criminal offenders.

And your Memorialists, &c.

THOMAS HEW WATSON, Mayor. L. S.

To the Right Honourable the Secretary of State for the Home Department.

The MEMORIAL of the MAYOR, ALDERMEN, and BURGESSES of the Borough of KENDAL, in the County of WESTMORELAND.

SHEWETH,

THAT for a long time the public have suffered great inconvenience and expense by the Assizes for the county of Westmoreland having been held at Appleby.

That an unwillingness to disturb an ancient arrangement, and the circumstance of the office of High Sheriff having been hereditary in the family of the late Earl of Thanet, whose residence was at Appleby Castle, where the Judges have been entertained on Circuit, alone induced the inhabitants of Westmoreland to endure this great and increasing inconvenience and expense.

That the office of High Sheriff having by the death of the late Earl of Thanet ceased to be hereditary, there is no longer any reasonable ground for continuing the Assizes for the county of Westmoreland at Appleby, which is remote from the bulk of the population of the county, and is exceedingly difficult of access, both by the nature of the roads and the mountainous character of the country, and this has been increasingly found to be the case since the abolition of the hereditary shrievalty, from the difficulty those gentlemen

who have filled the office of High Sheriff and their retinue have experienced in reaching a locality remote from all the modern facilities of approach.

That Appleby is a considerable distance from Penrith, whence Her Majesty's Judges would most conveniently depart from the line of railway, and whither they would return in order to visit it when passing between Lancaster and Carlisle.

That the population of the county of Westmoreland is about 58,250; of this 12,208 only are resident in the ward which is contiguous to Appleby, while 36,557 are resident in the Kendal and Lonsdale wards, which are contiguous to Kendal.

That the number of persons in the east and west wards to whom Kendal would be more convenient is 2,874.

That the number of persons to whom Kendal would be equally convenient with Appleby is 4,772, while to 13,150 only would Appleby be more convenient than Kendal.

That a recent valuation of the whole county proves that the increase in rateable value is chiefly in the divisions of the county most convenient for access to Kendal, which is constantly improving, while the other parts of the county are comparatively stationary, and therefore, looked at as a prospective arrangement, Kendal will be more and more the centre of the population of the county. The rateable value of those parts of Westmoreland convenient for Appleby was in

	1832.		1856.	
	67,439	- - -	68,874,	increase 2 per cent.
convenient to Kendal	205,577	- - -	251,880,	increase 25 per cent.

That your Memorialists have ascertained that during a long series of years the commitments for trial have been in proportion to the respective populations of the different wards, and that the country has incurred a large and increasing expenditure on account of the greater number of witnesses having to travel from the more populous to the less populous portion of Westmoreland.

That the inhabitants of Kendal and Lonsdale wards are liable to be frequently summoned on Special and other Juries, and that the expense, detention from their residences, and inconvenience of going to Appleby are far beyond what they would be at Kendal.

That the largest proportion of the Civil business of the Assizes arises in the Kendal and Lonsdale wards, and the removal of the Assizes from Appleby to Kendal would relieve the parties from the great additional expense of trying their causes at a distance from the place where the witnesses are usually resident.

That the cost of Courthouses would be amply compensated by the saving of expense attendant upon prosecuting the greater number of criminals so much nearer the place where the offence may be expected to arise, and such Courthouses would be used for the purposes of the local Court and Quarter Sessions, which are held regularly at Kendal.

That a good and substantial gaol now exists at Kendal, sufficiently commodious for the whole of the prisoners committed for trial in Westmoreland, and the removal of the Assizes would enable the county to dispense with the gaol at Appleby, and thereby save the cost of two gaol establishments, and at the same time produce uniformity of prison discipline.

That in support of the principle of one gaol for the whole county instead of two, your Memorialists beg leave to refer to the thirteenth report of the Inspector of Prisons as containing many and most convincing reasons in support of the economy and greater efficiency of one gaol for the whole county to be established at Kendal.

That Kendal is situated on the direct line of railway between Lancaster and Carlisle, and would be visited by Her Majesty's Judges with little loss of time.

That the Criminal cases for trial at the Assizes during the years 1837 to 1855, inclusive, were, from the Kendal and Lonsdale wards, 147, and from east and west wards, 67.

That the cases for trial at the Sessions during the same years were, from the Kendal and Lonsdale wards, 402, and from the east and west wards, 138.

That as a Commission is now sitting for the purpose of considering the question of Assize arrangements, and as your Memorialists are disposed to believe that the ancient division of counties will not be broken up by annexing Westmoreland to any other county, they pray that the subject may be referred to this Commission, in order that the claim of Kendal as the place for holding the Assizes for the county of Westmoreland may be properly investigated and considered.

JOHN WHITWELL, Mayor. (L.S.)

To Her Majesty's Commissioners for inquiring into the present arrangements for transacting the Judicial business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales, and also into the times and places at which Assizes are holden, and as to the division of the country in Circuits.

The MEMORIAL of the MAGISTRATES for the COUNTY of WESTMORLAND, residing within and acting for the DIVISIONS of the KENDAL and LONSDALE WARDS of the same County,—

SHEWETH,

That for a long time the public have suffered great inconvenience and expense by the Assizes for the county of Westmorland having been held at Appleby.

That an unwillingness to disturb an ancient arrangement, and the circumstance of the office of High Sheriff having been hereditary in the family of the late Earl of Thanet, whose residence was at Appleby Castle, where the Judges have been entertained on Circuit, alone induced the Inhabitants of Westmoreland to endure this great and increasing inconvenience and expense.

That the office of High Sheriff having by the death of the last Earl of Thanet ceased to be hereditary, there is no longer any reasonable ground for continuing the Assizes for the county of Westmoreland at Applebly, which is remote from the bulk of the population of the county, and is exceedingly difficult of access, both by the nature of the roads and the mountainous character of the country; and this has been increasingly found to be the case since the abolition of the hereditary shrievalty, from the difficuly those gentlemen who have filled the office of High Sheriff, and their retinue, have experienced in reaching a locality remote from all the modern facilities of approach.

That Appleby is a considerable distance from Penrith, whence Her Majesty's Judges would most conveniently depart from the line of Railway, and whither they would return in order to visit it when passing between Lancaster and Carlisle.

That the population of the county of Westmoreland is about 58,250; of this 12,208 only are resident in the ward, which is contiguous to Appleby, while 36,557 are resident in Kendal and Lonsdale wards which are contiguous to Kendal.

That the number of persons in the east and west wards, to whom Kendal would be more convenient is 2,874.

That the number of persons to whom Kendal would be equally canvenient with Applebly is 4,772, while to 13,150 only would Appleby be more convenient than Kendal.

That a recent valuation of the whole County proves that the increase in rateable value is chiefly in the divisions of the county most convenient for access to Kendal, which is constantly improving, while the other parts of the county are comparatively stationary, and therefore looked at as a prospective arrangement, Kendal will be more and more the centre of the population of the county. The rateable value of those parts of Westmorland convenient for Appleby was in

	1832.	1856.
	67,439	68,874, increase 2 per cent.
convenient to Kendal	205,577	251,880, increase 25 per cent.

That your Memorialists have ascertained that during a long series of years the commitments for trial have been in proportion to the respective populations of the different wards, and that the country has incurred a large and increasing expenditure on account of the great number of witnesses having to travel from the more populous to the less populous portion of Westmorland.

That the inhabitants of Kendal and Lonsdale wards are liable to be frequently summoned on Special and other juries, and that the expense, detention from their residences, and inconvenience of going to Appleby are far beyond what they would be at Kendal.

That the largest proportion of the Civil business of the Assizes arises in the Kendal and Lonsdale wards, and the removal of the Assizes from Appleby to Kendal would relieve the parties from the great additional expense of trying their causes at a distance from the place where the witnesses are usually resident.

That the cost of the courthouses would be amply compensated by the saving of expense attendant upon prosecuting the greater number of criminals so much nearer the place where the offence may be expected to arise, and such Courthouses would be used for the purposes of the local Court and Quarter Sessions, which are held regularly at Kendal.

That a good and substantial gaol now exists at Kendal, sufficiently commodious for the whole of the prisoners committed for trial in Westmorland, and the removal of the Assizes would enable the county to dispense with the gaol at Appleby, and thereby save the cost of two gaol establishments, and at the same time produce uniformity of prison discipline.

That in support of the principle of one gaol for the whole county instead two, your Memorialists beg leave to refer to the thirteenth report of the Inspector of Prisons as containing many and most convincing reasons in support of the economy and greater efficiency of one gaol for the whole county to be established at Kendal.

That Kendal is situated on the direct line of railway, between Lancaster and Carlisle, and would be visited by Her Majesty's judges with little loss of time.

That the Criminal cases for trial at the Assizes during the years 1837 to 1855 inclusive, were, from the Kendal and Lonsdale Wards, 147, and from the east and west wards, 67.

That the cases for trial at the sessions during the same years were from the Kendal and Lonsdale wards, 402, and from the east and west wards, 138.

Your Memorialists therefore humbly submit the above facts to the consideration of Her Majesty's Commissioners.

In testimony whereof the undersigned, as the chairman of the meeting at which the above Memorial was agreed to, and by the direction of such meeting, has subscribed his name hereto.

GEORGE EDWARD WILSON.

To Her Majesty's Commissioners for inquiring into the present arrangements for transacting the Judicial Business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales.

The MEMORIAL of the MAYOR, ALDERMEN, and BURGESSES of the BOROUGH of BIRMINGHAM in the COUNTY of WARWICK, in Council assembled,

SHEWETH,

That your Memorialists have observed with much satisfaction the nomination by Her Majesty the Queen of the noble and learned personages constituting your Honourable Board, a Royal Commission for inquiring into the present arrangements for transacting the Judicial Business, Civil and Criminal, of the Superior Courts of Common Law in England and Wales; and believing that among the many subjects which must take place in your deliberations, the consideration of the recommendation you may deem it proper to make relative to the local arrangements for transacting such Judicial Business will necessarily be of great importance, they have ventured to adduce and lay before you the following facts and statements in support of their prayer, that the Borough of Birmingham may be recommended by your Honourable Board either as an Assize Town of the county in which it is situate, or as the centre and site of the Courts of Law for the transaction of the Nisi Prius and Criminal business of the Midland District of the Kingdom, if the constitution of judicial districts be part of the recommendation you may deem it proper to make.

That considering the eligibility of the Borough of Birmingham simply as the Assize Town of the County of Warwick, your Memorialists are decidedly of opinion that if the convenience of the many is consulted, as it will be by your Honourable Board, in preference to the convenience of the few, the result will be the recommendation of that Borough as the future Assize Town of the County of Warwick.

That the Borough of Birmingham is already the site of the Court of Bankruptcy for the Midland District, and of the principal County Court of Warwickshire, which held in the year ending December thirty-first, one hundred and thirty sittings, disposing of no less than eighteen thousand and eighty-three plaints; and your Memorialists suggest that in all probability that Borough will be selected as the centre of a district, which may be defined by law in the present Session of Parliament in substitution for the existing Ecclesiastical or Diocesan districts, and as the site of a Court for the transaction of common form business in matters testamentary.

That the area of the Borough of Birmingham contains thirteen square miles, in which there are one hundred and seventy miles of streets, and a population estimated at the present period at two hundred and fifty thousand souls, the houses numbering at least fifty thousand, besides an immense number of warehouses, manufactories, and workshops, the annual rateable value of the property therein being eight hundred and forty thousand pounds.

That the Borough of Birmingham is rapidly growing in municipal importance, and possesses a variety of public institutions established upon a scale fully commensurate with the requirements of its population, and in fact available to the inhabitants of the populous manufacturing districts surrounding it; and among others, your Memorialists may call attention to the complete system of sewerage projected for the Borough, of which forty miles of arterial sewers have already been constructed at a cost of one hundred thousand pounds; to the Borough prison erected, at a cost of seventy-three thousand pounds, and capable of accommodating four hundred and eighty-six prisoners separately confined; to their noble Town Hall, erected at a cost of seventy thousand pounds, and esteemed by competent judges one of the finest rooms in Europe, your Memorialists having recently expended upon its internal decoration no less a sum than three thousand pounds; to the admirable Asylum for Lunatics for the Borough, which cost seventy-eight thousand pounds, and occupies with the site of the Borough prison, which it adjoins, thirty-nine acres of land; to the Public Baths, which cost twenty-five thousand pounds; to the Market Hall, which cost seventy-three thousand pounds, in addition to various other markets, which cost immense sums in their construction; to the numerous noble charitable and educational institutions, among which may be enumerated the General Hospital, the Queen's Hospital, the Lying-in Hospital, the General Dispensary, the Eye Infirmary, the Ear Infirmary, the Institution for the Relief of Bodily Deformity, the Queen's College, the Free Grammar School of King Edward the Sixth, the Birmingham and Midland Institute, and a host of others too numerous to mention, and to which your Memorialists refer only for the purpose of showing to your Honourable Board the public spirit of the inhabitants of the Borough, and its growing and almost metropolitan importance as the centre of the Midland District of the kingdom.

That in the year One thousand eight hundred and thirty-eight, the Borough of Birmingham was incorporated, and in the following year your Memorialists received a grant of the right of holding Quarter Sessions of the Peace, which Court is now presided over

by their learned Recorder Matthew Davenport Hill, Esquire, Q.C., attended by a numerous Bar, and at each such Sessions upon an average one hundred and twenty-five cases are disposed of, besides numerous appeals and other business in which the Court has jurisdiction.

That the number of Attornies and Solicitors practising at Birmingham extends to one hundred and fifty-four, and a considerable proportion of the business of the Assizes holden a Warwick, Stafford, and Worcester arises within the Borough.

That the Borough of Birmingham is situate at the north-west corner of the County of Warwick, the Counties of Stafford and Worcester closely adjoining its boundary, and its suburbs extend continuously for several miles into each of those counties, thus rendering the populous mining and manufacturing districts of South Staffordshire and East Worcestershire in reality an integral portion of the Borough of Birmingham; the quarterly meetings of the coal and iron masters being held here, and its labouring population frequenting its streets and markets, as they are readily enabled to do at a trifling expense by the facilities afforded by constant railway communication, which all terminates in the great central station in New Street, in the very heart of the town, in addition to the means of communication afforded by the Great Western Railway in another direction, the terminus of which is centrally situate in Snow Hill, not more than a quarter of a mile distant from the great central station just now referred to.

That the Borough of Birmingham and the area comprised in a circle of twelve miles around it contains a population nearly equal in number to the whole population of the remaining portions of the three counties enumerated, including the respective populations of their three Assize or County towns.

That Warwick, Stafford, and Worcester, where the Assizes for their respective Counties are now holden, are situate in thinly populated districts, purely agricultural, and with limited means of inter-communication.

That your Memorialists some time since purchased, at a cost of thirty-three thousand pounds, the reversion in fee-simple, subject only to certain short terms of years which they have compulsory power to buy up, a tract of land containing about three acres, and contiguous to the Town Hall, in the centre and most important part of the Borough, which would furnish an admirable site for the erection of Courts of law and the necessary lodgings for the Judges, and all other buildings required to be used therewith.

That your Memorialists have reason to believe that the constitution of the Borough of Birmingham into an Assize Town of the County, but more especially as the site of a centre or District Court for the transaction of the Nisi Prius and Criminal business of a District to be hereafter defined with reference to the extent of population, means of intercommunication, and general convenience, and not merely with reference to county boundary, would be received with the utmost satisfaction, not only by the inhabitants of the Midland District herein-before indicated, but by the Attornies and Solicitors and the Members of the Bar of the Midland and Oxford Circuits, who, with Her Majesty's Judges of Assize, and all parties concerned, would, as your Memorialists believe, soon appreciate the superior convenience of Birmingham as compared with the present Assize Towns.

Wherefore your Memorialists pray, that your Honourable Board will be pleased to recommend to the proper authorities the nomination of Birmingham as the future Assize Town of the County of Warwick, or otherwise, and which would be far more acceptable and convenient, the constitution of Birmingham as the site of a centre or District Court for transaction of the Nisi Prius and Criminal business of a Midland District to be hereafter defined by law; and your Memorialists desire to be at liberty, if they think fit, to appear before your Honourable Board by the Town Clerk and such Counsel, Agents, and Witnesses as they may deem necessary in support of this case.

And your Memorialists will ever pray, &c.

Given under the Corporate Common Seal of the Borough of Birmingham, this Fifth day of February, in the year of our Lord, One thousand eight hundred and fifty-seven.

L.S.

RETURNS.

1. COMPARATIVE ANNUAL AVERAGES of the NUMBER of PRISONERS TRIED, and CAUSES ENTERED and TRIED, and DAYS OCCUPIED on CIRCUIT, in the Ten Years ending 1844 and the Twelve Years ending 1856.

ASSIZE TOWNS.	Annual Average of Prisoners tried in the Period ending		Increase.	Decrease.	Annual Average of Causes entered for the Period ending		Increase.	Decrease	Annual Average of Causes tried for the Period ending		Increase.	Decrease.	Annual Average Number of Days occupied, &c.	
	1844.	1856.			1844.	1856.			1844.	1856.			1844	1856
HOME CIRCUIT.														
Hertford	45	51	6	—	27	32	5	—	24	29	5	—	6	6½
Chelmsford	85	98	13	—	27	32	5	—	24	28	4	—	8	9½
Maidstone	155	210	55	—	49	50	1	—	45	41	—	4	10	12
Lewes	85	92	7	—	38	21	—	17	34	19	—	15	8	7
Surrey	60	65	5	—	126	170	44	—	114	144	30	—	10	28
Totals of Home Circuit.	430	516	86	—	267	305	38	—	241	261	20	—	42	63
WESTERN CIRCUIT.														
Wiltshire	129	123	—	6	17	11	—	6	15	9	—	6	7	7
Winchester	125	153	28	—	29	18	—	11	25	16	—	9	9	8⅓
Dorchester	66	54	—	12	12	8	—	4	11	7	—	4	5	4½
Somerset	191	154	—	37	54	39	—	15	49	35	—	14	12	11
Exeter	139	128	—	11	50	36	—	14	41	31½	—	9½	13	10
Bodmin	68	84	16	—	25	16	—	9	23	13½	—	9½	7	7½
Totals of Western Circuit.	718	696	—	22	187	128	—	59	164	112	—	52	53	48
MIDLAND CIRCUIT.														
Northampton	71	73	2	—	19	9	—	10	18	9	—	9	—	—
Oakham	7	8	1	—	2	1	—	1	2	1	—	1	—	—
Lincoln and City	56	71	15	—	24	19	—	5	24	19	—	5	—	—
Nottingham and Town.	59	74	15	—	20	10	—	10	20	10	—	10	—	—
Derby	78	97	19	—	21	15	—	6	21	14	—	7	—	—
Leicester	85	64	—	21	16	11	—	5	15	10	—	5	—	—
Coventry and Warwick.	251	242	—	9	57	41	—	16	57	37	—	20	—	—
Totals of Midland Circuit.	607	629	22	—	159	106	—	53	157	100	—	57	58	60
NORFOLK CIRCUIT.														
Bucks	72	69	—	3	11	8	—	3	10	7	—	3	6	7
Beds	47	49	2	—	5	5	—	—	4	5	1	—	5	7
Huntingdon	20	28	8	—	4	3	—	1	3	3	—	—	3	4
Cambridge	56	62	6	—	22	12	—	10	19	11	—	8	7	10
Suffolk	66	78	12	—	22	20	—	2	18	18	—	—	7	9
Norfolk and City	112	96	—	16	34	22	—	12	29	20	—	9	10	11
Totals of Norfolk Circuit.	373	382	9	—	98	70	—	28	83	64	—	19	38	48
NORTH WALES CIRCUIT.														
Welchpool	6	8	2	—	2	1 1/2	—	1 1/2	2	1	—	1	—	—
Newtown	7	3¼	—	3¾	2	1½	—	½	2	1½	—	½	—	—
Bala	2	2¾	¾	—	½	⅓	—	⅙	1/10	¼	3/20	—	—	—
Dolgelly	1	2¾	1¾	—	1	1	—	—	½	1	½	—	—	—
Carnarvon	11	15	4	—	2	6	4	—	1	5¾	4¾	—	—	—
Beaumaris	6	13¼	7¼	—	1	1⅓	⅓	—	1	1⅓	⅓	—	—	—
Ruthin	16	20	4	—	3	6	3	—	1½	5⅚	4⅓	—	—	—
Mold	14	14½	½	—	3	4½	1½	—	1½	4⅙	2⅔	—	—	—
Chester and City	164	154	—	10	15	31	16	—	6	28	22	—	—	—
Totals of North Wales Circuit.	227	233½	6½	—	29½	52 9/12	23¼	—	15⅗	48 10/12	33¼	—	23*	46

* It is probable that this average is on one Circuit only, and not on the Year.

1. Comparative Annual Averages of the Number of Prisoners tried, &c.—*continued.*

Assize Towns.	Annual Average of Prisoners tried in the Period ending		Increase.	Decrease.	Annual Average of Causes entered for the Period ending		Increase.	Decrease.	Annual Average of Causes tried for the Period ending		Increase.	Decrease.	Annual Average Number of Days occupied, &c.	
	1844.	1856.			1844.	1856.			1844.	1856.			1844	1856
South Wales Circuit.														
Presteign	10	9	—	1	5	2	—	3	5	2	—	3	4	6
Brecon	23	23	—	—	8	8½	½	—	6	7	1	—	6	7
Carmarthen	14	14½	½	—	27	12½	—	14½	19	10⅓	—	8½	10	9
Cardigan	7	9	2	—	8	8½	½	—	6	6½	½	—	5	7
Haverfordwest	12	23½	11½	—	10	4½	—	5½	7	4	—	3	6	7
Glamorgan	43	76	33	—	22	15	—	7	14	12	—	2	11	13
Total of South Wales Circuit.	109	155	46	—	80	51	—	29	57	42	—	15	42	49
Northern Circuit.														
Lancaster	35	40	5	—	37	19	—	18	29	17	—	12	8	6½
Liverpool	198	332	134	—	294	228	—	66	204	147	—	57	30	31
Durham	63	100	37	—	43	30	—	13	32	27	—	5	7	7½
Appleby	7	15	8	—	7	3	—	4	7	3	—	4	2	2
Carlisle	34	45	11	—	18	12	—	6	16	12	—	4	5	5
Newcastle and Town.	61	76	15	—	27	20	—	7	24	17	—	7	5	9
York and City	227	312	85	—	190	136	—	54	153	102	—	51	24	30
Totals of Northern Circuit.	625	920	295	—	616	448	—	168	465	325	—	140	81*	91
Oxford Circuit.														
Reading	54	57	3	—	9	7	—	2	8	6	—	2	3	3
Abingdon	18	19	1	—	9	7	—	2	8	6	—	2	2	4
Oxford	84	70	—	14	19	10	—	9	17	9	—	8	6	7
Worcester and City.	95	118	23	—	37	19	—	18	32	17	—	15	7	9
Stafford	183	172	—	11	57	47	—	10	48	38	—	10	12	14
Shrewsbury	79	59	—	20	24	14	—	10	21	11	—	10	6	7
Hereford	48	49	1	—	15	10	—	5	13	9	—	4	4	6
Monmouth	71	83	12	—	20	11	—	9	17	10	—	7	5	7
Gloucester and City.	220	146	—	74	55	43	—	12	48	36	—	12	14	13
Totals of Oxford Circuit.	852	773	—	79	245	168	—	77	212	142	—	70	59†	70‡

Summary of all the Circuits.

Home	430	516	86	—	267	305	38	—	241	261	20	—	42	63
Western	718	696	—	22	187	128	—	59	164	112	—	52	53	48
Midland	607	629	22	—	159	106	—	53	157	99	—	58	58	60
Norfolk	373	382	9	—	98	70	—	28	83	64	—	19	38	48
North Wales	227	234	6	—	30	53	24	—	15	49	34	—	23	46
South Wales	109	155	46	—	80	51	—	29	57	42	—	15	42	49
Northern	625	920	295	—	616	448	—	168	465	325	—	140	81	91
Oxford	852	773	—	79	245	168	—	77	212	142	—	70	59	70
Totals	3,941	4,305	363	—	1,682	1,329	—	352	1,394	1,094	—	300	396	475

* Criminal only; no Return in 1844 for Civil.

† This probably excluded Commission days as well as Sundays. The Circuit papers show that in 1844 the Circuit lasted 76 days including Sundays.

‡ Exclusive of Sundays.

2. RETURNS of the NUMBER of PRISONERS TRIED, and CAUSES ENTERED and TRIED, upon the CIRCUITS, during the 12 Years ending 1856.

HOME CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
HERTFORDSHIRE ASSIZES.						
1845 Spring	50	—	24	21	—	
1845 Summer	9	—	22	19	—	
1845 Winter	—	—	—	—	—	
1846 Spring	24	—	24	22	—	
1846 Summer	18	—	25	23	1	
1846 Winter	—	—	—	—	—	
1847 Spring	20	—	21	19	—	The number of Prisoners tried as appearing in the first column comprehends Prisoners whose cases were disposed of as well by verdict of a Jury as otherwise.
1847 Summer	14	—	18	17	—	
1847 Winter	—	—	—	—	—	
1848 Spring	38	—	22	20	—	
1848 Summer	27	—	18	14	—	
1848 Winter	—	—	—	—	—	
1849 Spring	38	—	18	15	—	
1849 Summer	27	—	22	21	—	
1849 Winter	—	—	—	—	—	
1850 Spring	47	—	11	9	—	
1850 Summer	21	—	8	8	—	
1850 Winter	—	—	—	—	—	
1851 Spring	32	—	15	13	—	
1851 Summer	22	—	14	10	—	
1851 Winter	—	—	—	—	—	
1852 Spring	21	—	12	9	—	
1852 Summer	26	—	11	11	—	
1852 Winter	—	—	—	—	—	
1853 Spring	21	—	7	7	—	
1853 Summer	11	—	16	16	—	
1853 Winter	—	—	—	—	—	
1854 Spring	34	—	19	19	—	
1854 Summer	20	—	19	18	—	
1854 Winter	—	—	—	—	—	
1855 Spring	42	—	8	8	—	
1855 Summer	9	—	18	14	—	
1855 Winter	12	—	—	—	—	
1856 Spring	12	—	9	9	—	
1856 Summer	7	—	7	5	—	
1856 Winter	—	—	—	—	—	
Totals	602	—	388	347	1	
ESSEX ASSIZES.						
1845 Spring	58	—	14	14	—	
1845 Summer	36	11	22	21	—	
1845 Winter	—	—	—	—	—	
1846 Spring	49	—	25	22	1	
1846 Summer	43	—	17	17	—	
1846 Winter	—	—	—	—	—	
1847 Spring	66	—	14	13	—	
1847 Summer	25	—	9	9	—	
1847 Winter	—	—	—	—	—	
1848 Spring	76	—	18	16	1	
1848 Summer	51	—	27	21	2	
1848 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Essex Assizes—*cont.*						
1849 Spring	30	38	23	19	—	
1849 Summer	45	—	20	16	—	
1849 Winter	—	—	—	—	—	
1850 Spring	28	37	16	16	—	
1850 Summer	42	—	14	14	—	
1850 Winter	—	—	—	—	—	
1851 Spring	43	37	19	17	1	
1851 Summer	35	—	11	6	—	
1851 Winter	—	—	—	—	—	
1852 Spring	48	—	12	11	—	
1852 Summer	47	—	14	13	—	
1852 Winter	—	—	—	—	—	
1853 Spring	46	—	19	18	—	
1853 Summer	34	—	12	11	—	
1853 Winter	—	—	—	—	—	
1854 Spring	49	—	5	4	—	
1854 Summer	47	—	18	16	—	
1854 Winter	—	—	—	—	—	
1855 Spring	36	—	7	6	—	
1855 Summer	38	—	17	14	—	
1855 Winter	15	—	—	—	—	
1856 Spring	19	—	5	4	—	
1856 Summer	13	—	23	21	—	
1856 Winter	30	—	—	—	—	
Totals	1,049	123	381	339	5	
Kent Assizes.						
1845 Spring	99	32	25	22	—	
1845 Summer	60	—	33	29	—	
1845 Winter	—	—	—	—	—	
1846 Spring	82	32	29	26	—	
1846 Summer	54	—	39	32	—	
1846 Winter	—	—	—	—	—	
1847 Spring	68	50	42	29	8	
1847 Summer	55	—	27	24	—	
1847 Winter	—	—	—	—	—	
1848 Spring	68	93	38	27	7	
1848 Summer	83	—	31	26	—	
1848 Winter	—	—	—	—	—	
1849 Spring	65	122	21	19	—	
1849 Summer	66	—	26	22	—	
1849 Winter	—	—	—	—	—	
1850 Spring	41	129	21	18	3	
1850 Summer	61	7	23	3	—	
1850 Winter	—	—	—	—	—	
1851 Spring	56	115	17	16	—	
1851 Summer	64	—	16	13	—	
1851 Winter	—	—	—	—	—	
1852 Spring	50	81	30	28	—	
1852 Summer	51	—	18	14	—	
1852 Winter	—	—	—	—	—	
1853 Spring	83	44	19	19	—	
1853 Summer	56	—	22	20	—	
1853 Winter	—	—	—	—	—	
1854 Spring	120	52	29	27	—	
1854 Summer	75	—	31	22	—	
1854 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
KENT ASSIZES—*cont.*						
1855 Spring	57	98	13	11	—	
1855 Summer	78	—	10	10	—	
1855 Winter	14	—	—	—	—	
1856 Spring	60	28	17	16	—	
1856 Summer	47	—	22	21	—	
1856 Winter	24	—	—	—	—	
Totals	1,637	883	599	494	18	
SUSSEX ASSIZES.						
1845 Spring	45	—	10	8	—	
1845 Summer	32	9	11	11	—	
1845 Winter	—	—	—	—	—	
1846 Spring	66	—	18	14	—	
1846 Summer	32	—	10	10	—	
1846 Winter	—	—	—	—	—	
1847 Spring	61	—	13	12	—	
1847 Summer	31	—	9	7	—	
1847 Winter	—	—	—	—	—	
1848 Spring	72	—	15	14	1	
1848 Summer	44	11	4	4	—	
1848 Winter	—	—	—	—	—	
1849 Spring	60	9	19	16	1	
1849 Summer	31	—	15	15	—	
1849 Winter	—	—	—	—	—	
1850 Spring	39	22	10	7	—	
1850 Summer	40	—	21	20	—	
1850 Winter	—	—	—	—	—	
1851 Spring	39	5	6	6	—	
1851 Summer	51	—	2	2	—	
1851 Winter	—	—	—	—	—	
1852 Spring	52	—	4	3	—	
1852 Summer	31	—	12	10	—	
1852 Winter	—	—	—	—	—	
1853 Spring	41	6	5	5	—	
1853 Summer	22	—	11	10	—	
1853 Winter	—	—	—	—	—	
1854 Spring	35	—	7	7	—	
1854 Summer	44	16	13	12	—	
1854 Winter	—	—	—	—	—	
1855 Spring	40	—	8	6	—	
1855 Summer	24	—	12	12	—	
1855 Winter	16	—	—	—	—	
1856 Spring	38	—	5	5	—	
1856 Summer	18	—	9	8	—	
1856 Winter	20	—	—	—	—	
Totals	1,024	78	249	224	2	
SURREY ASSIZES.						
1845 Spring	43	—	59	53	—	
1845 Summer	29	—	106	90	—	
1845 Winter	—	—	—	—	—	
1846 Spring	33	—	70	55	—	
1846 Summer	27	—	100	82	—	
1846 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
SURREY ASSIZES—*cont.*						
1847 Spring	49	—	75	63	—	
1847 Summer	47	—	114	97	—	
1847 Winter	—	—	—	—	—	
1848 Spring	38	—	76	60	1	
1848 Summer	68	—	93	89	—	
1848 Winter	—	—	—	—	—	
1849 Spring	43	—	67	58	—	
1849 Summer	29	—	96	78	—	
1849 Winter	—	—	—	—	—	
1850 Spring	40	—	69	60	1	
1850 Summer	38	—	67	57	—	
1850 Winter	—	—	—	—	—	
1851 Spring	51	—	54	44	1	
1851 Summer	11	—	81	70	—	
1851 Winter	—	—	—	—	—	
1852 Spring	38	—	44	39	—	
1852 Summer	23	—	70	63	—	
1852 Winter	—	—	—	—	—	
1853 Spring	36	—	43	40	—	
1853 Summer	20	—	124	110	—	
1853 Winter	—	—	—	—	—	
1854 Spring	34	—	63	58	—	
1854 Summer	26	—	96	75	—	
1854 Winter	—	—	—	—	—	
1855 Spring	19	—	93	79	1	
1855 Summer	10	—	203	167	—	
1855 Winter	9	—	—	—	—	
1856 Spring	19	—	62	51	—	
1856 Summer	14	—	117	97	—	
1856 Winter	—	—	—	—	—	
Totals	794	—	2,042	1,735	4	

SUMMARY OF HOME CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.	
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Criminal.	Civil.
Hertfordshire	602	—	388	347	1	77	See Note.
Essex	1,049	123	381	339	5	112	
Sussex	1,024	78	249	224	2	88	
Kent	1,637	883	599	494	18	144	
Surrey—Kingston	443	—	777	660	4	61	
Surrey—Croydon	146	—	724	612	—	20	
Surrey—Guildford	196	—	543	463	—	29	
Totals	5,097	1,084	3,661	3,139	30	531	

Note.—The records and minutes of each Circuit being made up as of the Commission day at each place, no accurate memorandum is kept of the number of days the Judges actually sit. The return hereto annexed may be taken as substantially correct. The Civil business may be taken as lasting about 21 days over and above the Criminal business, in the county of Surrey in every year, and in other counties on an average of years about the same time as the Criminal business.

MARSHALL STRAIGHT,
Deputy Clerk of Assize.

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

WESTERN CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
WILTSHIRE ASSIZES.						
1845 Spring	107	—	7	5	—	
1845 Summer	56	—	4	3	—	
1845 Winter	—	—	—	—	—	
1846 Spring	81	18	4	4	—	
1846 Summer	26	—	8	5	—	
1846 Winter	—	—	—	—	—	
1847 Spring	72	37	3	3	—	
1847 Summer	38	17	19	12	—	
1847 Winter	—	—	—	—	—	
1848 Spring	124	—	2	2	—	
1848 Summer	61	15	8	7	—	
1848 Winter	—	—	—	—	—	
1849 Spring	66	—	5	5	—	
1849 Summer	49	—	3	3	—	
1849 Winter	—	—	—	—	—	
1850 Spring	44	—	4	4	—	
1850 Summer	35	—	5	4	—	
1850 Winter	—	—	—	—	—	
1851 Spring	42	22	6	5	—	
1851 Summer	20	—	1	1	—	
1851 Winter	—	—	—	—	—	
1852 Spring	86	—	5	5	—	
1852 Summer	19	—	3	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	96	—	1	1	—	
1853 Summer	35	—	7	6	—	
1853 Winter	—	—	—	—	—	
1854 Spring	84	—	3	3	—	
1854 Summer	41	—	6	6	—	
1854 Winter	—	—	—	—	—	
1855 Spring	92	—	12	8	2	
1855 Summer	9	19	3	3	—	
1855 Winter	—	—	—	—	—	
1856 Spring	41	6	3	2	—	
1856 Summer	7	—	3	3	—	
1856 Winter	12	—	—	—	—	
Totals	1,343	134	125	102	2	
HAMPSHIRE ASSIZES.						
1845 Spring	88	—	4	4	—	
1845 Summer	26	—	12	12	—	
1845 Winter	—	—	—	—	—	
1846 Spring	89	12	14	11	—	
1846 Summer	28	9	11	10	—	
1846 Winter	—	—	—	—	—	
1847 Spring	59	29	14	13	—	
1847 Summer	51	—	16	13	2	
1847 Winter	—	—	—	—	—	
1848 Spring	59	5	21	15	2	
1848 Summer	48	7	15	14	—	
1848 Winter	—	—	—	—	—	
1849 Spring	113	26	4	4	—	
1849 Summer	34	—	5	5	—	
1849 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
HAMPSHIRE ASSIZES—*cont.*						
1850 Spring	70	34	6	6	—	
1850 Summer	32	—	15	10	1	
1850 Winter	—	—	—	—	—	
1851 Spring	138	—	8	8	—	
1851 Summer	34	—	4	4	—	
1851 Winter	—	—	—	—	—	
1852 Spring	106	—	6	6	—	
1852 Summer	53	—	3	3	—	
1852 Winter	—	—	—	—	—	
1853 Spring	85	28	7	6	—	
1853 Summer	43	—	8	7	—	
1853 Winter	—	—	—	—	—	
1854 Spring	147	—	6	6	—	
1854 Summer	35	—	11	11	—	
1854 Winter	—	—	—	—	—	
1855 Spring	106	10	8	7	1	
1855 Summer	28	—	10	10	—	
1855 Winter	44	—	—	—	—	
1856 Spring	45	14	6	5	—	
1856 Summer	43	—	7	6	—	
1856 Winter	56	—	—	—	—	
Totals	1,660	174	221	196	6	
DORSETSHIRE ASSIZES.						
1845 Spring	52	8	2	2	—	
1845 Summer	15	—	5	5	—	
1845 Winter	—	—	—	—	—	
1846 Spring	57	3	6	6	—	
1846 Summer	12	—	2	2	—	
1846 Winter	—	—	—	—	—	
1847 Spring	97	—	4	4	—	
1847 Summer	19	7	4	4	—	
1847 Winter	—	—	—	—	—	
1848 Spring	31	—	5	4	—	
1848 Summer	22	—	4	3	—	
1848 Winter	—	—	—	—	—	
1849 Spring	32	—	5	5	—	
1849 Summer	13	—	2	2	—	
1849 Winter	—	—	—	—	—	
1850 Spring	21	—	6	6	—	
1850 Summer	12	—	5	4	—	
1850 Winter	—	—	—	—	—	
1851 Spring	52	7	5	4	—	
1851 Summer	11	—	4	3	—	
1851 Winter	—	—	—	—	—	
1852 Spring	23	—	8	7	—	
1852 Summer	11	—	2	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	19	—	3	2	—	
1853 Summer	19	—	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	21	—	2	2	—	
1854 Summer	14	—	—	—	—	
1854 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued*.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
DORSETSHIRE ASSIZES —*cont.*						
1855 Spring	28	—	5	5	—	
1855 Summer	11	—	2	2	—	
1855 Winter	—	—	—	—	—	
1856 Spring	19	—	4	4	—	
1856 Summer	9	5	4	3	—	
1856 Winter	—	—	—	—	—	
Totals	620	30	92	84	—	
SOMERSETSHIRE ASSIZES.						
1845 Spring	92	42	25	25	—	
1845 Summer	65	—	22	21	—	
1845 Winter	—	—	—	—	—	
1846 Spring	106	26	19	15	—	
1846 Summer	53	—	23	19	—	
1846 Winter	—	—	—	—	—	
1847 Spring	90	15	21	19	—	
1847 Summer	35	31	15	15	—	
1847 Winter	—	—	—	—	—	
1848 Spring	79	17	23	22	—	
1848 Summer	59	28	18	17	—	
1848 Winter	—	—	—	—	—	
1849 Spring	72	39	18	15	—	
1849 Summer	32	—	20	17	—	
1849 Winter	—	—	—	—	—	
1850 Spring	80	—	9	8	—	
1850 Summer	49	11	16	16	—	
1850 Winter	—	—	—	—	—	
1851 Spring	89	20	11	9	—	
1851 Summer	51	—	13	12	—	
1851 Winter	—	—	—	—	—	
1852 Spring	76	17	11	9	—	
1852 Summer	58	—	12	11	—	
1852 Winter	—	—	—	—	—	
1853 Spring	91	—	12	9	—	
1853 Summer	49	—	6	6	—	
1853 Winter	—	—	—	—	—	
1854 Spring	77	—	23	18	2	
1854 Summer	71	—	8	7	1	
1854 Winter	—	—	—	—	—	
1855 Spring	81	—	16	16	—	
1855 Summer	25	—	20	17	—	
1855 Winter	18	—	—	—	—	
1856 Spring	63	—	6	6	—	
1856 Summer	32	—	11	11	—	
1856 Winter	13	—	—	—	—	
Totals	1,606	246	378	340	3	
DEVONSHIRE AND CITY OF EXETER ASSIZES.						
1845 Spring	57	14	33	27	—	
1845 Summer	52	10	20	18	—	
1845 Winter	—	—	—	—	—	
1846 Spring	41	13	15	13	—	
1846 Summer	39	26	28	26	—	
1846 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.		Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
		Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Devonshire and City of Exeter Assizes—*cont.*							
1847	Spring	47	54	28	22	1	
	Summer	43	15	23	19	1	
	Winter	—	—	—	—	—	
1848	Spring	52	45	34	31	—	
	Summer	38	13	19	16	—	
	Winter	—	—	—	—	—	
1849	Spring	49	62	18	17	—	
	Summer	53	—	21	16	—	
	Winter	—	—	—	—	—	
1850	Spring	39	11	19	17	—	
	Summer	54	—	11	9	—	
	Winter	—	—	—	—	—	
1851	Spring	52	10	22	21	—	
	Summer	54	—	6	6	—	
	Winter	—	—	—	—	—	
1852	Spring	64	29	14	13	—	
	Summer	43	—	15	12	—	
	Winter	—	—	—	—	—	
1853	Spring	29	30	8	8	—	
	Summer	47	—	15	15	—	
	Winter	—	—	—	—	—	
1854	Spring	84	25	18	16	—	
	Summer	33	—	18	17	—	
	Winter	—	—	—	—	—	
1855	Spring	50	11	17	16	—	
	Summer	26	—	10	8	—	
	Winter	19	—	—	—	—	
1856	Spring	43	—	11	10	—	
	Summer	31	—	6	6	—	
	Winter	25	—	—	—	—	
Totals		1,164	368	429	379	2	
Cornwall Assizes.							
1845	Spring	24	—	9	9	—	
	Summer	17	—	5	5	—	
	Winter	—	—	—	—	—	
1846	Spring	45	4	3	3	—	
	Summer	19	—	17	12	—	
	Winter	—	—	—	—	—	
1847	Spring	75	14	13	12	—	
	Summer	44	—	5	5	—	
	Winter	—	—	—	—	—	
1848	Spring	66	5	15	12	—	
	Summer	39	—	11	10	—	
	Winter	—	—	—	—	—	
1849	Spring	59	9	5	5	—	
	Summer	27	—	11	8	1	
	Winter	—	—	—	—	—	
1850	Spring	37	26	10	5	—	
	Summer	22	—	4	3	—	
	Winter	—	—	—	—	—	
1851	Spring	58	—	7	6	—	
	Summer	21	—	8	7	—	
	Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Cornwall Assizes—*cont.*						
1852 Spring	36	19	15	11	—	
1852 Summer	21	—	3	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	53	—	8	8	—	
1853 Summer	20	—	1	1	—	
1853 Winter	—	—	—	—	—	
1854 Spring	76	—	12	11	—	
1854 Summer	23	—	2	—	—	2 withdrawn.
1854 Winter	—	—	—	—	—	
1855 Sprign	56	—	5	5	—	
1855 Summer	24	—	7	6	—	
1855 Winter	—	—	—	—	—	
1856 Spring	46	—	10	8	—	
1856 Summer	22	—	7	7	—	
1856 Winter	—	—	—	—	—	
Totals	930	77	193	161	1	
Bristol Assizes.						
1845 Spring	—	—	—	—	—	The Clerk of Assize for the Western Circuit has acted as Associate at Bristol only since the Summer Circuit 1852, previously to which time the Associates were Messrs. Bird and Burgess, Solicitors, of Bristol.
1845 Summer	—	—	—	—	—	
1845 Winter	—	—	—	—	—	
1846 Spring	—	—	—	—	—	
1846 Summer	—	—	—	—	—	
1846 Winter	—	—	—	—	—	
1847 Spring	—	—	—	—	—	
1847 Summer	—	—	—	—	—	
1847 Winter	—	—	—	—	—	
1848 Spring	—	—	—	—	—	
1848 Summer	—	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	—	—	—	—	—	
1849 Summer	—	—	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	—	—	—	—	—	
1850 Summer	—	—	—	—	—	
1850 Winter	—	—	—	—	—	
1851 Spring	—	—	—	—	—	
1851 Summer	—	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	—	—	—	—	—	
1852 Summer	—	—	19	17	—	
1852 Winter	—	—	—	—	—	
1853 Spring	—	—	—	—	—	
1853 Summer	—	—	26	24	—	
1853 Winter	—	—	—	—	—	
1854 Spring	—	—	—	—	—	
1854 Summer	—	—	28	24	—	
1854 Winter	—	—	—	—	—	
1855 Spring	—	—	16	14	—	
1855 Summer	—	—	—	—	—	
1855 Winter	—	—	—	—	—	
1856 Spring	—	—	—	—	—	
1856 Summer	—	—	6	5	—	
1856 Winter	—	—	—	—	—	
Totals	—	—	95	84	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

SUMMARY OF WESTERN CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.	
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Criminal.	Civil.
Wilts - { Salisbury -	947	83	55	48	2	48	20
Wilts - { Devizes -	396	51	70	55	—	32	22
Winchester - -	1,660	174	221	196	6	104	73
Dorchester - - -	620	30	92	84	—	55	32
Exeter and City - -	1,164	368	429	379	2	116	117
Bodmin - - -	930	77	193	161	1	91	62
Somerset - { Taunton -	1,027	176	194	171	2	75	55
Somerset - { *Wells -	579	70	184	169	1	53	51
Bristol - - -	—	—	95	84	—	—	†
Totals -	7,323	1,029	1,533	1,347	14	574	432

* This includes Bridgewater, at which place till the last Three or Four Years the Assizes were held in the Summer alternately with Wells.

† The Number of Days not known.

(Signed) SIDNEY GURNEY,
Clerk of Assize.

MIDLAND CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
NORTHAMPTONSHIRE ASSIZES.						
1845 { Spring -	44	30	11	11	—	
1845 { Summer -	14	—	7	7	—	
1845 { Winter -	—	—	—	—	—	
1846 { Spring -	44	9	5	5	—	
1846 { Summer -	27	—	8	7	—	
1846 { Winter -	—	—	—	—	—	
1847 { Spring -	37	—	4	4	—	
1847 { Summer -	13	—	2	2	—	
1847 { Winter -	—	—	—	—	—	
1848 { Spring -	64	—	6	6	—	
1848 { Summer -	27	—	9	9	—	
1848 { Winter -	—	—	—	—	—	
1849 { Spring -	61	13	7	7	—	
1849 { Summer -	19	—	4	4	—	
1849 { Winter -	—	—	—	—	—	
1850 { Spring -	25	15	2	2	—	
1850 { Summer -	—	12	6	6	—	
1850 { Winter -	—	—	—	—	—	
1851 { Spring -	79	—	1	1	—	
1851 { Summer -	13	3	7	7	—	
1851 { Winter -	—	—	—	—	—	
1852 { Spring -	61	—	4	4	—	
1852 { Summer -	24	—	3	3	—	
1852 { Winter -	—	—	—	—	—	
1853 { Spring -	35	5	2	2	—	
1853 { Summer -	18	1	3	3	—	
1853 { Winter -	—	—	—	—	—	
1854 { Spring -	62	—	7	6	1	
1854 { Summer -	20	—	7	7	—	
1854 { Winter -	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
NORTHAMPTONSHIRE ASSIZES—*cont.*						
1855 Spring	30	—	5	5	—	
1855 Summer	9	—	1	1	—	
1855 Winter	—	—	—	—	—	
1856 Spring	38	—	2	2	—	
1856 Summer	4	—	—	—	—	
1856 Winter	18	—	—	—	—	
Totals	786	88	113	111	1	
RUTLANDSHIRE ASSIZES.						
1845 Spring	5	—	—	—	—	
1845 Summer	6	—	—	—	—	
1845 Winter	—	—	—	—	—	
1846 Spring	4	—	1	1	—	
1846 Summer	2	—	—	—	—	
1846 Winter	—	—	—	—	—	
1847 Spring	4	—	1	1	—	
1847 Summer	12	—	—	—	—	
1847 Winter	—	—	—	—	—	
1848 Spring	14	—	2	2	—	
1848 Summer	2	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	8	—	—	—	—	
1849 Summer	—	—	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	3	—	—	—	—	
1850 Summer	—	—	—	—	—	
1850 Winter	—	—	—	—	—	
1851 Spring	15	—	—	—	—	
1851 Summer	3	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	7	—	—	—	—	
1852 Summer	4	—	—	—	—	
1852 Winter	—	—	—	—	—	
1853 Spring	3	—	—	—	—	
1853 Summer	3	—	—	—	—	
1853 Winter	—	—	—	—	—	
1854 Spring	2	—	1	1	—	
1854 Summer	—	—	—	—	—	
1854 Winter	—	—	—	—	—	
1855 Spring	1	—	—	—	—	
1855 Summer	2	—	1	1	—	
1855 Winter	—	—	—	—	—	
1856 Spring	5	—	—	—	—	
1856 Summer	1	—	1	1	—	
1856 Winter	—	—	—	—	—	
Totals	106	—	7	7	—	
LINCOLNSHIRE AND CITY OF LINCOLN ASSIZES.						
1845 Spring	25	—	12	12	—	
1845 Summer	13	5	6	6	—	
1845 Winter	—	—	—	—	—	
1846 Spring	48	—	8	8	—	
1846 Summer	17	—	19	18	1	
1846 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Lincolnshire and City of Lincoln Assizes—*cont.*						
1847 Spring	44	—	10	10	—	
1847 Summer	46	—	10	10	—	
1847 Winter	—	—	—	—	—	
1848 Spring	38	8	8	8	—	
1848 Summer	17	—	10	10	—	
1848 Winter	—	—	—	—	—	
1849 Spring	17	42	9	8	—	1 withdrawn.
1849 Summer	23	—	11	11	—	
1849 Winter	—	—	—	—	—	
1850 Spring	44	—	15	15	—	
1850 Summer	30	—	15	15	—	
1850 Winter	—	—	—	—	—	
1851 Spring	61	15	12	12	—	
1851 Summer	21	3	9	9	—	
1851 Winter	—	—	—	—	—	
1852 Spring	47	—	4	4	—	
1852 Summer	36	—	6	6	—	
1852 Winter	—	—	—	—	—	
1853 Spring	38	—	3	3	—	
1853 Summer	20	—	3	2	—	1 withdrawn.
1853 Winter	—	—	—	—	—	
1854 Spring	58	—	14	13	—	1 withdrawn.
1854 Summer	28	—	11	11	—	
1854 Winter	—	—	—	—	—	
1855 Spring	49	—	4	3	—	1 withdrawn.
1855 Summer	12	—	14	14	—	
1855 Winter	—	—	—	—	—	
1856 Spring	26	—	10	10	—	1 withdrawn.
1856 Summer	11	—	9	8	—	
1856 Winter	11	—	—	—	—	
Totals	780	73	232	226	1	
Nottinghamshire and Town of Nottingham.						
1845 Spring	20	—	6	6	—	
1845 Summer	27	—	7	7	—	
1845 Winter	—	—	—	—	—	
1846 Spring	41	—	—	—	—	
1846 Summer	21	—	11	11	—	
1846 Winter	—	—	—	—	—	
1847 Spring	39	—	3	3	—	
1847 Summer	21	—	5	5	—	
1847 Winter	—	—	—	—	—	
1848 Spring	51	6	1	1	—	
1848 Summer	18	—	3	3	—	
1848 Winter	—	—	—	—	—	
1849 Spring	38	—	8	8	—	
1849 Summer	26	—	5	5	—	
1849 Winter	—	—	—	—	—	
1850 Spring	47	—	7	7	—	
1850 Summer	35	—	3	3	—	
1850 Winter	—	—	—	—	—	
1851 Spring	43	4	3	3	—	
1851 Summer	21	6	4	4	—	
1851 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
NOTTINGHAMSHIRE AND TOWN OF NOTTINGHAM ASSIZES—*cont.*						
1852 Spring	52	22	5	5	—	
1852 Summer	28	—	6	6	—	
1852 Winter	—	—	—	—	—	
1853 Spring	37	—	5	5	—	
1853 Summer	5	4	4	4	—	
1853 Winter	—	—	—	—	—	
1854 Spring	71	—	4	4	—	
1854 Summer	25	—	6	5	—	1 withdrawn.
1854 Winter	—	—	—	—	—	
1855 Spring	64	—	3	3	—	
1855 Summer	25	—	8	8	—	
1855 Winter	21	—	—	—	—	
1856 Spring	23	—	8	8	—	
1856 Summer	19	—	2	2	—	
1856 Winter	27	—	—	—	—	
Totals	845	42	117	116	—	
DERBYSHIRE ASSIZES.						
1845 Spring	47	—	10	10	—	
1845 Summer	21	—	7	7	—	
1845 Winter	—	—	—	—	—	
1846 Spring	43	17	10	10	3	
1846 Summer	47	—	9	9	—	
1846 Winter	—	—	—	—	—	
1847 Spring	55	11	11	11	—	
1847 Summer	18	—	5	5	—	
1847 Winter	—	—	—	—	—	
1848 Spring	55	—	7	7	—	
1848 Summer	47	—	5	5	—	
1848 Winter	—	—	—	—	—	
1849 Spring	47	13	7	7	—	
1849 Summer	23	—	9	9	—	
1849 Winter	—	—	—	—	—	
1850 Spring	55	7	10	10	—	
1850 Summer	33	—	8	8	—	
1850 Winter	—	—	—	—	—	
1851 Spring	72	—	5	5	—	
1851 Summer	30	—	9	9	—	
1851 Winter	—	—	—	—	—	
1852 Spring	52	24	7	7	—	
1852 Summer	10	—	2	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	56	—	4	3	—	1 withdrawn.
1853 Summer	31	—	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	56	—	9	7	—	2 withdrawn.
1854 Summer	39	3	9	7	—	1 withdrawn.
1854 Winter	—	—	—	—	—	
1855 Spring	53	23	9	7	—	
1855 Summer	26	26	5	5	—	
1855 Winter	14	—	—	—	—	
1856 Spring	50	—	10	8	—	2 withdrawn.
1856 Summer	27	—	6	5	—	1 withdrawn.
1856 Winter	25	—	—	—	—	
Totals	1,041	124	176	166	3	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Leicestershire and Borough of Leicester Assizes.						
1845 Spring	38	—	11	11	—	
1845 Summer	49	8	8	8	—	
1845 Winter	—	—	—	—	—	
1846 Spring	33	—	5	5	—	
1846 Summer	25	3	8	8	—	
1846 Winter	—	—	—	—	—	
1847 Spring	44	—	7	7	—	
1847 Summer	42	3	9	9	—	
1847 Winter	—	—	—	—	—	
1848 Spring	17	2	5	5	—	
1848 Summer	23	—	1	1	—	
1848 Winter	—	—	—	—	—	
1849 Spring	62	10	8	8	—	
1849 Summer	31	—	3	3	—	
1849 Winter	—	—	—	—	—	
1850 Spring	22	3	4	4	—	
1850 Summer	28	—	6	6	—	
1850 Winter	—	—	—	—	—	
1851 Spring	33	9	4	4	—	
1851 Summer	21	34	5	5	—	
1851 Winter	—	—	—	—	—	
1852 Spring	19	—	2	2	—	
1852 Summer	24	1	6	6	—	
1852 Winter	—	—	—	—	—	
1853 Spring	29	—	4	4	—	
1853 Summer	19	—	4	2	—	2 withdrawn.
1853 Winter	—	—	—	—	—	
1854 Spring	27	—	6	6	—	
1854 Summer	14	—	6	5	—	1 withdrawn.
1854 Winter	—	—	—	—	—	
1855 Spring	24	—	9	9	—	
1855 Summer	15	—	5	5	—	
1855 Winter	—	—	—	—	—	
1856 Spring	46	—	2	3	—	
1856 Summer	12	—	3	2	—	
1856 Winter	—	—	—	—	—	
Totals	697	73	131	128	—	
Warwickshire Assizes.						
1845 Spring	109	47	28	26	—	2 withdrawn.
1845 Summer	61	5	20	19	—	1 withdrawn.
1845 Winter	—	—	—	—	—	
1846 Spring	99	59	17	16	—	1 withdrawn.
1846 Summer	54	22	29	25	—	4 withdrawn.
1846 Winter	—	—	—	—	—	
1847 Spring	114	48	22	22	—	
1847 Summer	81	—	23	22	—	1 withdrawn.
1847 Winter	—	—	—	—	—	
1848 Spring	135	76	20	20	—	
1848 Summer	98	31	16	16	—	
1848 Winter	—	—	—	—	—	
1849 Spring	123	41	15	13	—	2 withdrawn.
1849 Summer	76	15	13	13	—	
1849 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
WARWICKSHIRE ASSIZES—*cont.*						
1850 Spring	170	77	12	12	—	
1850 Summer	66	—	15	15	—	
1850 Winter	—	—	—	—	—	
1851 Spring	137	34	15	15	—	
1851 Summer	50	—	7	7	—	
1851 Winter	—	—	—	—	—	
1852 Spring	69	55	13	13	—	
1852 Summer	52	4	15	15	—	
1852 Winter	—	—	—	—	—	
1853 Spring	122	29	29	23	—	6 withdrawn.
1853 Summer	66	8	30	17	—	13 withdrawn.
1853 Winter	—	—	—	—	—	
1854 Spring	116	18	29	27	—	2 withdrawn.
1854 Summer	86	—	32	26	—	6 withdrawn.
1854 Winter	—	—	—	—	—	
1855 Spring	96	38	30	25	—	5 withdrawn.
1855 Summer	77	—	33	28	—	5 withdrawn.
1855 Winter	39	—	—	—	—	
1856 Spring	85	8	13	12	—	1 withdrawn.
1856 Summer	34	20	17	13	—	4 withdrawn.
1856 Winter	50	—	—	—	—	
Total	2,265	635	493	440	—	

SUMMARY OF THE MIDLAND CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.		REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Criminal.	Civil.	
Northampton	786	88	113	112	1	—	—	
Leicester and Borough.	697	73	131	128	—	—	—	3 withdrawn.
Oakham	106	—	7	7	—	—	—	
Lincoln and City	780	73	232	226	1	—	—	5wit hdrawn.
Nottingham and Town.	845	42	117	116	—	—	—	1 withdrawn.
Derby	1,041	124	176	166	3	—	—	7 withdrawn.
Warwick	2,265	635	493	440	—	—	—	53 withdrawn.
Total	6,520	1,035	1,269	1,195	5	—	—	69 Withdrawn.

Note.—The Number of Days cannot be ascertained, but the average is about Four Days at each Town, exclusive of the Commission day, and an entire week at Warwick.

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

NORFOLK CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
BUCKINGHAMSHIRE ASSIZES.						
1845 Spring	85	—	5	5	—	1 referred.
1845 Summer	13	—	6	6	—	
1845 Winter	—	—	—	—	—	
1846 Spring	61	10	7	6	1	
1846 Summer	8	—	3	3	—	
1846 Winter	—	—	—	—	—	
1847 Spring	67	—	7	6	1	
1847 Summer	18	—	3	2	—	1 withdrawn.
1847 Winter	—	—	—	—	—	
1848 Spring	30	—	2	2	—	
1848 Summer	16	—	3	3	—	
1848 Winter	—	—	—	—	—	
1849 Spring	33	—	3	2	—	1 struck out.
1849 Summer	11	—	5	4	1	
1849 Winter	—	—	—	—	—	
1850 Spring	41	—	4	4	—	
1850 Summer	21	—	5	5	—	
1850 Winter	—	—	—	—	—	
1851 Spring	29	—	5	5	—	
1851 Summer	8	—	1	1	—	
1851 Winter	—	—	—	—	—	
1852 Spring	18	—	2	1	—	1 withdrawn.
1852 Summer	19	—	3	3	—	
1852 Winter	—	—	—	—	—	
1853 Spring	29	30	3	3	—	
1853 Summer	15	3	1	1	—	
1853 Winter	—	—	—	—	—	
1854 Spring	85	—	6	6	—	
1854 Summer	12	—	4	4	—	
1854 Winter	—	—	—	—	—	
1855 Spring	63	—	1	1	—	
1855 Summer	19	—	5	5	—	
1855 Winter	—	—	—	—	—	
1856 Spring	63	3	3	3	—	
1856 Summer	19	—	3	3	—	
1856 Winter	—	—	—	—	—	
Total	783	46	90	84	3	
BEDFORDSHIRE ASSIZES.						
1845 Spring	59	—	3	3	—	
1845 Summer	1	—	3	3	—	
1845 Winter	—	—	—	—	—	
1846 Spring	36	—	3	3	—	
1846 Summer	4	—	5	5	—	
1846 Winter	—	—	—	—	—	
1847 Spring	38	—	4	3	—	1 withdrawn.
1847 Summer	10	—	3	3	—	
1847 Winter	—	—	—	—	—	
1848 Spring	35	—	4	4	—	
1848 Summer	11	—	2	2	—	
1848 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
BEDFORDSHIRE ASSIZES—*cont.*						
1849 Spring	35	2	2	1	—	1 withdrawn.
1849 Summer	—	10	5	5	—	
1849 Winter	—	—	—	—	—	
1850 Spring	31	—	2	2	—	
1850 Summer	8	—	—	—	—	
1850 Winter	—	—	—	—	—	
1851 Spring	46	—	—	—	—	
1851 Summer	7	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	32	—	2	2	—	
1852 Summer	17	—	2	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	35	—	7	6	—	1 withdrawn.
1853 Summer	8	—	2	2	—	
1853 Winter	—	—	—	—	—	
1854 Spring	45	—	2	2	—	
1854 Summer	23	—	—	—	—	
1854 Winter	—	—	—	—	—	
1855 Spring	34	7	6	2	4	
1855 Summer	10	—	5	5	—	
1855 Winter	—	—	—	—	—	
1856 Spring	37	—	1	1	—	
1856 Summer	11	—	2	2	—	
1856 Winter	—	—	—	—	—	
Total	573	19	65	58	4	
HUNTINGDONSHIRE ASSIZES.						
1845 Spring	29	—	2	2	—	
1845 Summer	1	—	2	2	—	
1845 Winter	—	—	—	—	—	
1846 Spring	22	1	—	—	—	
1846 Summer	10	—	1	1	—	
1846 Winter	—	—	—	—	—	
1847 Spring	23	—	—	—	—	
1847 Summer	5	—	2	1	—	1 withdrawn.
1847 Winter	—	—	—	—	—	
1848 Spring	21	—	1	1	—	
1848 Summer	10	—	1	1	—	
1848 Winter	—	—	—	—	—	
1849 Spring	16	—	—	—	—	
1849 Summer	10	5	1	1	—	
1849 Winter	—	—	—	—	—	
1850 Spring	21	—	3	3	—	
1850 Summer	12	—	1	1	—	
1850 Winter	—	—	—	—	—	
1851 Spring	21	—	1	1	—	
1851 Summer	12	—	1	1	—	
1851 Winter	—	—	—	—	—	
1852 Spring	17	21	2	2	—	
1852 Summer	9	—	2	1	—	1 withdrawn.
1852 Winter	—	—	—	—	—	
1853 Spring	18	—	—	—	—	
1853 Summer	4	—	3	3	—	
1853 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
HUNTINGDONSHIRE ASSIZES—*cont.*						
1854 Spring	21	—	4	4	—	
1854 Summer	6	—	2	2	—	
1854 Winter	—	—	—	—	—	
1855 Spring	7	4	1	1	—	
1855 Summer	7	—	1	1	—	
1855 Winter	—	—	—	—	—	
1856 Spring	8	—	3	3	—	
1856 Summer	3	—	1	1	—	
1856 Winter	—	—	—	—	—	
Total	313	31	35	33	—	
CAMBRIDGESHIRE ASSIZES.						
1845 Spring	43	—	12	12	—	
1845 Summer	17	—	4	4	—	
1845 Winter	—	—	—	—	—	
1846 Spring	49	4	9	9	—	
1846 Summer	18	—	9	9	—	
1846 Winter	—	—	—	—	—	
1847 Spring	47	—	5	4	—	1 withdrawn.
1847 Summer	22	—	4	4	—	
1847 Winter	—	—	—	—	—	
1848 Spring	45	7	6	5	1	
1848 Summer	27	—	13	12	1	
1848 Winter	—	—	—	—	—	
1849 Spring	58	—	12	11	1	
1849 Summer	11	22	6	4	—	2 withdrawn.
1849 Winter	—	—	—	—	—	
1850 Spring	65	19	6	4	2	
1850 Summer	25	—	5	5	—	
1850 Winter	—	—	—	—	—	
1851 Spring	42	—	1	1	—	
1851 Summer	24	—	4	4	—	
1851 Winter	—	—	—	—	—	
1852 Spring	19	13	4	4	—	
1852 Summer	25	—	7	6	—	1 withdrawn.
1852 Winter	—	—	—	—	—	
1853 Spring	16	—	7	7	—	
1853 Summer	16	—	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	25	—	3	3	—	
1854 Summer	10	—	4	4	—	
1854 Winter	—	—	—	—	—	
1855 Spring	15	—	7	7	—	
1855 Summer	22	—	8	5	—	3 withdrawn.
1855 Winter	—	—	—	—	—	
1856 Spring	20	—	4	4	—	
1856 Summer	16	—	4	4	—	
1856 Winter	—	—	—	—	—	
Total	677	65	147	135	5	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Suffolk Assizes.						
1845 Spring	39	—	8	8	—	
1845 Summer	35	—	9	9	—	
1845 Winter	—	—	—	—	—	
1846 Spring	43	—	12	7	—	5 withdrawn.
1846 Summer	36	—	8	8	—	
1846 Winter	—	—	—	—	—	
1847 Spring	34	—	14	12	1	1 withdrawn.
1847 Summer	23	—	15	13	—	2 withdrawn.
1847 Winter	—	—	—	—	—	
1848 Spring	30	—	4	4	—	
1848 Summer	28	7	22	18	1	3 withdrawn.
1848 Winter	—	—	—	—	—	
1849 Spring	52	—	12	5	—	4 withdrawn; 3 struck out.
1849 Summer	36	—	20	17	1	2 withdrawn.
1849 Winter	—	—	—	—	—	
1850 Spring	41	—	8	8	—	
1850 Summer	33	—	11	11	—	
1850 Winter	—	—	—	—	—	
1851 Spring	84	8	5	4	—	1 withdrawn.
1851 Summer	41	—	11	11	—	
1851 Winter	—	—	—	—	—	
1852 Spring	19	45	8	7	—	1 withdrawn.
1852 Summer	49	—	7	5	—	2 withdrawn.
1852 Winter	—	—	—	—	—	
1853 Spring	40	—	8	6	1	1 withdrawn.
1853 Summer	35	—	9	9	—	
1853 Winter	—	—	—	—	—	
1854 Spring	47	—	8	7	—	1 withdrawn.
1854 Summer	44	—	7	7	—	
1854 Winter	—	—	—	—	—	
1855 Spring	16	—	9	9	—	
1855 Summer	23	—	12	12	—	
1855 Winter	—	—	—	—	—	
1856 Spring	31	—	4	4	—	
1856 Summer	20	—	13	11	—	2 withdrawn.
1856 Winter	—	—	—	—	—	
Totals	879	60	244	212	4	
Norfolk and City of Norwich Assizes.						
1845 Spring	36	4	14	14	—	
1845 Summer	25	5	11	11	—	
1845 Winter	—	—	—	—	—	
1846 Spring	49	19	14	14	—	
1846 Summer	38	—	13	13	—	
1846 Winter	—	—	—	—	—	
1847 Spring	55	8	14	14	—	
1847 Summer	42	—	5	5	—	
1847 Winter	—	—	—	—	—	
1848 Spring	55	5	15	14	1	
1848 Summer	46	—	9	9	—	
1848 Winter	—	—	—	—	—	
1849 Spring	40	—	12	11	—	1 withdrawn.
1849 Summer	—	26	8	7	—	1 withdrawn.
1849 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
NORFOLK AND CITY OF NORWICH ASSIZES—*cont.*						
1850 Spring	67	—	22	22	—	
1850 Summer	52	5	7	7	—	
1850 Winter	—	—	—	—	—	
1851 Spring	63	9	4	4	—	
1851 Summer	51	—	7	7	—	
1851 Winter	—	—	—	—	—	
1852 Spring	14	45	7	7	—	
1852 Summer	47	3	9	7	—	2 withdrawn.
1852 Winter	—	—	—	—	—	
1853 Spring	46	14	12	9	—	2 withdrawn ; 1 struck out.
1853 Summer	31	—	7	7	—	
1853 Winter	—	—	—	—	—	
1854 Spring	55	—	10	10	—	
1854 Summer	29	—	5	5	—	
1854 Winter	—	—	—	—	—	
1855 Spring	48	—	12	12	—	
1855 Summer	43	—	19	9	1	9 withdrawn.
1855 Winter	17	—	—	—	—	
1856 Spring	24	—	15	15	—	
1856 Summer	31	—	10	10	—	
1856 Winter	—	—	—	—	—	
Total	1004	143	261	243	2	

SUMMARY OF NORFOLK CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets referred, withdrawn, struck out.	Number of Days.	
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Criminal.	Civil.
Aylesbury	728	46	75	70	6	68	55
Buckingham	55	—	15	14	1	15	10
Cambridge	677	65	147	135	12	123	84
Huntingdon	313	31	35	33	2	46	38
Bury St. Edmunds	476	53	100	81	19	64	46
Ipswich	403	7	144	131	13	46	67
Norwich City of Norwich	1,004	143	261	243	18	137	93
Bedford	573	19	65	58	7	84	48
Total	4,229	364	842	765	78	583	441

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

NORTH WALES CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
MONTGOMERYSHIRE ASSIZES.						
1845 Spring	8	—	1	—	—	
1845 Summer	3	—	6	6	—	
1845 Winter	—	—	—	—	—	
1846 Spring	1	—	1	1	—	
1846 Summer	—	—	5	5	—	
1846 Winter	—	—	—	—	—	
1847 Spring	11	—	2	1	1	
1847 Summer	3	—	3	3	—	
1847 Winter	—	—	—	—	—	
1848 Spring	11	—	1	1	—	
1848 Summer	4	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	9	—	—	—	—	
1849 Summer	6	—	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	5	—	3	3	—	
1850 Summer	3	—	1	1	—	
1850 Winter	—	—	—	—	—	
1851 Spring	10	—	2	2	—	
1851 Summer	3	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	7	—	2	2	—	
1852 Summer	2	—	—	—	—	
1852 Winter	—	—	—	—	—	
1853 Spring	6	—	—	—	—	
1853 Summer	3	—	1	1	—	
1853 Winter	—	—	—	—	—	
1854 Spring	13	—	1	1	—	
1854 Summer	5	—	1	1	—	
1854 Winter	—	—	—	—	—	
1855 Spring	8	—	—	—	—	
1855 Summer	5	—	2	1	—	1 withdrawn.
1855 Winter	—	—	—	—	—	
1856 Spring	8	—	—	—	—	
1856 Summer	2	—	—	—	—	
1856 Winter	—	—	—	—	—	
Total	136	—	32	29	1	
MERIONETHSHIRE ASSIZES.						
1845 Spring	—	—	—	—	—	
1845 Summer	2	—	2	2	—	
1845 Winter	—	—	—	—	—	
1846 Spring	—	—	1	—	—	
1846 Summer	6	—	2	2	—	
1846 Winter	—	—	—	—	—	
1847 Spring	—	—	—	—	—	
1847 Summer	5	—	—	—	—	
1847 Winter	—	—	—	—	—	
1848 Spring	—	—	—	—	—	
1848 Summer	—	—	1	1	—	
1848 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Merionethshire Assizes—*cont.*						
1849 Spring	2	—	—	—	—	
1849 Summer	1	—	3	3	—	
1849 Winter	—	—	—	—	—	
1850 Spring	7	—	1	1	—	
1850 Summer	2	—	2	2	—	
1850 Winter	—	—	—	—	—	
1851 Spring	10	—	—	—	—	
1851 Summer	2	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	8	—	—	—	—	
1852 Summer	2	—	1	1	—	
1852 Winter	—	—	—	—	—	
1853 Spring	1	—	—	—	—	
1853 Summer	—	—	1	1	—	
1853 Winter	—	—	—	—	—	
1854 Spring	1	—	1	1	—	
1854 Summer	—	—	—	—	—	
1854 Winter	—	—	—	—	—	
1855 Spring	2	—	1	1	—	
1855 Summer	7	—	—	—	—	
1855 Winter	—	—	—	—	—	
1856 Spring	2	—	—	—	—	
1856 Summer	2	—	—	—	—	
1856 Winter	—	—	—	—	—	
Total	62	—	16	15	—	
Carnarvonshire Assizes.						
1845 Spring	12	—	5	5	—	
1845 Summer	2	—	6	5	—	1 withdrawn.
1845 Winter	—	—	—	—	—	
1846 Spring	8	—	8	8	—	
1846 Summer	1	—	6	5	—	1 withdrawn
1846 Winter	—	—	—	—	—	
1847 Spring	11	—	5	5	—	
1847 Summer	10	—	2	2	—	
1847 Winter	—	—	—	—	—	
1848 Spring	12	—	3	3	—	
1848 Summer	20	—	1	1	—	
1848 Winter	—	—	—	—	—	
1849 Spring	11	—	1	1	—	
1849 Summer	9	—	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	2	—	1	1	—	
1850 Summer	8	—	1	1	—	
1850 Winter	—	—	—	—	—	
1851 Spring	9	—	3	3	—	
1851 Summer	3	—	3	3	—	
1851 Winter	—	—	—	—	—	
1852 Spring	6	—	3	3	—	
1852 Summer	6	—	—	—	—	
1852 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
CARNARVONSHIRE ASSIZES—*cont.*						
1853 Spring	13	—	5	4	—	1 withdrawn.
1853 Summer	7	—	1	1	—	
1853 Winter	—	—	—	—	—	
1854 Spring	13	—	4	4	—	
1854 Summer	6	—	4	4	—	
1854 Winter	—	—	—	—	—	
1855 Spring	3	—	2	2	—	
1855 Summer	5	—	2	2	—	
1855 Winter	—	—	—	—	—	
1856 Spring	—	—	6	6	—	
1856 Summer	8	—	—	—	—	
1856 Winter	—	—	—	—	—	
Total	185	—	72	69	—	
ANGLESEY ASSIZES.						
1845 Spring	7	—	—	—	—	
1845 Summer	3	—	—	—	—	
1845 Winter	—	—	—	—	—	
1846 Spring	2	—	1	1	—	
1846 Summer	3	—	1	1	—	
1846 Winter	—	—	—	—	—	
1847 Spring	12	—	—	—	—	
1847 Summer	6	—	4	4	—	
1847 Winter	—	—	—	—	—	
1848 Spring	7	—	2	2	—	
1848 Summer	3	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	18	—	3	3	—	
1849 Summer	2	—	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	14	—	—	—	—	
1850 Summer	7	—	1	1	—	
1850 Winter	—	—	—	—	—	
1851 Spring	14	—	—	—	—	
1851 Summer	10	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	10	—	2	2	—	
1852 Summer	—	—	—	—	—	
1852 Winter	—	—	—	—	—	
1853 Spring	10	—	—	—	—	
1853 Summer	3	—	1	1	—	
1853 Winter	—	—	—	—	—	
1854 Spring	8	—	—	—	—	
1854 Summer	1	—	—	—	—	
1854 Winter	—	—	—	—	—	
1855 Spring	10	—	—	—	—	
1855 Summer	4	—	—	—	—	
1855 Winter	—	—	—	—	—	
1856 Spring	3	—	1	1	—	
1856 Summer	2	—	—	—	—	
1856 Winter	—	—	—	—	—	
Total	159	—	16	16	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Denbighshire Assizes.						
1845 Spring	4	—	5	4	—	
1845 Summer	3	—	5	5	—	
1845 Winter	—	—	—	—	—	
1846 Spring	5	—	4	4	—	
1846 Summer	8	—	5	4	—	
1846 Winter	—	—	—	—	—	
1847 Spring	7	—	6	6	—	
1847 Summer	8	—	4	4	—	
1847 Winter	—	—	—	—	—	
1848 Spring	7	—	10	10	—	
1848 Summer	20	—	2	2	—	
1848 Winter	—	—	—	—	—	
1849 Spring	17	—	2	2	—	
1849 Summer	13	—	1	1	—	
1849 Winter	—	—	—	—	—	
1850 Spring	19	—	4	4	—	
1850 Summer	9	—	1	1	—	
1850 Winter	—	—	—	—	—	
1851 Spring	13	—	2	2	—	
1851 Summer	13	—	3	3	—	
1851 Winter	—	—	—	—	—	
1852 Spring	4	—	3	3	—	
1852 Summer	9	—	2	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	4	12*	2	2	—	* The Judge was ill.
1853 Summer	15	—	2	2	—	
1853 Winter	—	—	—	—	—	
1854 Spring	6	—	2	2	—	
1854 Summer	12	—	2	2	—	
1854 Winter	—	—	—	—	—	
1855 Spring	8	—	2	2	—	
1855 Summer	9	—	2	2	—	
1855 Winter	—	—	—	—	—	
1856 Spring	7	—	—	—	—	
1856 Summer	6	—	1	1	—	
1856 Winter	—	—	—	—	—	
Totals	226	12	72	70		
Flintshire Assizes						
1845 Spring	7	—	1	1	—	
1845 Summer	4	—	2	2	—	
1845 Winter	—	—	—	—	—	
1846 Spring	7	—	1	1	—	
1846 Summer	15	—	5	5	—	
1846 Winter	—	—	—	—	—	
1847 Spring	8	—	5	5	—	
1847 Summer	11	—	4	4	—	
1847 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
FLINTSHIRE ASSIZES —*cont.*						
1848 Spring	6	—	2	2	—	
1848 Summer	5	—	2	2	—	
1848 Winter	—	—	—	—	—	
1849 Spring	6	—	2	1	1	
1849 Summer	14	—	3	3	—	
1849 Winter	—	—	—	—	—	
1850 Spring	3	—	2	2	—	
1850 Summer	8	—	2	1	—	
1850 Winter	—	—	—	—	—	
1851 Spring	22	—	3	3	—	
1851 Summer	9	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	5	—	3	3	—	
1852 Summer	8	—	1	1	—	
1852 Winter	—	—	—	—	—	
1853 Spring	5	—	1	1	—	
1853 Summer	8	—	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	5	—	6	6	—	
1854 Summer	5	—	—	—	—	
1854 Winter	—	—	—	—	—	
1855 Spring	4	—	2	2	—	
1855 Summer	1	—	2	2	—	
1855 Winter	—	—	—	—	—	
1856 Spring	1	—	1	1	—	
1856 Summer	2	—	—	—	—	
1856 Winter	—	—	—	—	—	
Total	169	—	53	51	1	
CHESHIRE AND CITY OF CHESTER.						
1845 Spring	59	—	21	18	—	
1845 Summer	44	—	14	11	—	1 entered twice.
1845 Winter	—	—	—	—	—	
1846 Spring	50	31	26	25	—	
1846 Summer	30	10	13	22	—	
1846 Winter	—	—	—	—	—	
1847 Spring	77	—	25	22	—	
1847 Summer	34	9	11	11	—	
1847 Winter	—	—	—	—	—	
1848 Spring	72	39	23	23	—	
1848 Summer	63	—	15	15	—	
1848 Winter	—	—	—	—	—	
1849 Spring	54	10	31	25	—	
1849 Summer	51	—	10	9	—	
1849 Winter	—	—	—	—	—	
1850 Spring	90	22	11	11	—	
1850 Summer	48	—	14	14	—	
1850 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
CHESHIRE AND CITY OF CHESTER—*cont.*						
1851 Spring	93	11	13	9	—	
1851 Summer	56	—	21	19	—	
1851 Winter	—	—	—	—	—	
1852 Spring	99	12	22	19	—	
1852 Summer	64	5	6	6	—	
1852 Winter	—	—	—	—	—	
1853 Spring	84	17	9	8	—	
1853 Summer	70	—	18	17	—	
1853 Winter	—	—	—	—	—	
1854 Spring	83	—	17	17	—	
1854 Summer	83	—	10	10	—	
1854 Winter	—	—	—	—	—	
1855 Spring	60	11	19	15	—	
1855 Summer	58	—	7	5	—	
1855 Winter	32	—	—	—	—	
1856 Spring	53	—	10	8	—	
1856 Summer	53	—	9	9	—	
1856 Winter	22	10	—	—	—	This Commissioner was Mr. Serjeant Channell, who came to this Assize as Judge.
Totals	1,582	187	375	338	—	

SUMMARY OF NORTH WALES AND CHESTER CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.	
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Criminal.*	Civil.
Montgomery - Welchpool, Newtown -	136	—	32	29	1	56	—
Merionethshire Bala, Dolgelly -	62	—	16	15	—	49	—
Carnarvon - -	185	—	72	69	—	66	—
Beaumaris - - -	159	—	16	16	—	52	
Ruthin - - -	226	12†	72	70	—	78	—
Mold - - -	169	—	53	51	1	55	—
Chester and City - -	1,582	187	375	338	—	195	—
Total -	2,519	199	636	588	2	551	150

* Civil and criminal business is so much mixed up in Wales when we have only one Judge, that we cannot state the time employed in each.

† The Judge was ill when these prisoners were tried by a Commissioner.

H. S. STRONG.

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

SOUTH WALES CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Radnorshire Assizes.						
1845 Spring	7	—	3	3	—	
1845 Summer	7	—	5	5	—	
1845 Winter	—	—	—	—	—	
1846 Spring	17	—	—	—	—	
1846 Summer	—	—	2	2	—	
1846 Winter	—	—	—	—	—	
1847 Spring	4	—	1	1	—	
1847 Summer	—	—	—	—	—	
1847 Winter	—	—	—	—	—	
1848 Spring	9	—	2	1	1	
1848 Summer	—	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	4	—	—	—	—	
1849 Summer	—	3	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	2	—	1	1	—	
1850 Summer	3	2	4	3	—	
1850 Winter	—	—	—	—	—	
1851 Spring	3	—	—	—	—	
1851 Summer	1	—	1	1	—	
1851 Winter	—	—	—	—	—	
1852 Spring	8	—	—	—	—	
1852 Summer	2	—	—	—	—	
1852 Winter	—	—	—	—	—	
1853 Spring	3	—	1	1	—	
1853 Summer	4	—	—	—	—	
1853 Winter	—	—	—	—	—	
1854 Spring	7	—	1	1	—	
1854 Summer	2	—	1	1	—	
1854 Winter	—	—	—	—	—	
1855 Spring	6	—	—	—	—	
1855 Summer	—	—	2	2	—	
1855 Winter	—	—	—	—	—	
1856 Spring	3	—	—	—	—	
1856 Summer	4	—	—	—	—	
1856 Winter	—	—	—	—	—	
Totals	96	5	24	22	1	
Breconshire Assizes.						
1845 Spring	8	9	6	4	1	
1845 Summer	—	1	6	6	—	
1845 Winter	—	—	—	—	—	
1846 Spring	3	—	3	3	—	
1846 Summer	6	—	6	4	—	
1846 Winter	—	—	—	—	—	
1847 Spring	6	4	5	5	—	
1847 Summer	17	—	7	7	—	
1847 Winter	—	—	—	—	—	
1848 Spring	2	11	4	4	—	
1848 Summer	9	—	4	4	—	
1848 Winter	—	—	—	—	—	
1849 Spring	19	—	2	2	—	
1849 Summer	3	—	5	2	3	
1849 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Breconshire Assizes —*cont.*						
1850 Spring	19	—	5	4	—	
1850 Summer	9	—	8	7	—	
1850 Winter	—	—	—	—	—	
1851 Spring	14	—	3	3	—	
1851 Summer	12	—	5	4	—	
1851 Winter	—	—	—	—	—	
1852 Spring	13	—	3	3	—	
1852 Summer	9	—	4	4	—	
1852 Winter	—	—	—	—	—	
1853 Spring	14	—	2	2	—	
1853 Summer	9	—	4	4	—	
1853 Winter	—	—	—	—	—	
1854 Spring	10	—	4	3	—	
1854 Summer	14	—	4	4	—	
1854 Winter	—	—	—	—	—	
1855 Spring	18	5	2	2	—	
1855 Summer	12	—	2	2	—	
1855 Winter	—	—	—	—	—	
1856 Spring	6	—	3	3	—	
1856 Summer	10	—	4	3	—	
1856 Winter	—	—	—	—	—	
Totals	242	30	101	89	4	
Carmarthenshire Assizes.						
1845 Spring	18	1	14	9	2	
1845 Summer	9	—	13	12	—	
1845 Winter	—	—	—	—	—	
1846 Spring	6	—	14	13	—	
1846 Summer	2	—	5	4	—	
1846 Winter	—	—	—	—	—	
1847 Spring	4	—	6	6	—	
1847 Summer	6	—	5	3	—	
1847 Winter	—	—	—	—	—	
1848 Spring	6	—	12	11	1	
1848 Summer	7	—	3	2	1	
1848 Winter	—	—	—	—	—	
1849 Spring	8	—	3	3	—	
1849 Summer	1	—	8	7	—	
1849 Winter	—	—	—	—	—	
1850 Spring	7	—	3	2	—	
1850 Summer	3	—	2	2	—	
1850 Winter	—	—	—	—	—	
1851 Spring	11	—	8	7	—	
1851 Summer	10	—	4	4	—	
1851 Winter	—	—	—	—	—	
1852 Spring	12	—	5	5	—	
1852 Summer	6	—	7	3	—	
1852 Winter	—	—	—	—	—	
1853 Spring	14	—	4	4	—	
1853 Summer	2	—	3	2	—	
1853 Winter	—	—	—	—	—	
1854 Spring	14	—	8	7	—	
1854 Summer	3	—	10	7	—	
1854 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
CARMARTHEN ASSIZES —*cont.*						
1855 Spring	11	—	1	1	—	
1855 Summer	5	—	7	7	—	
1855 Winter	—	—	—	—	—	
1856 Spring	—	—	3	3	—	
1856 Summer	8	—	3	2	1	
1856 Winter	—	—	—	—	—	
Totals	173	1	151	126	5	
CARDIGANSHIRE ASSIZES.						
1845 Spring	15	—	2	2	—	
1845 Summer	1	2	4	3	—	
1845 Winter	—	—	—	—	—	
1846 Spring	9	—	6	5	1	
1846 Summer	4	—	8	8	—	
1846 Winter	—	—	—	—	—	
1847 Spring	6	—	9	9	—	
1847 Summer	4	—	6	6	—	
1847 Winter	—	—	—	—	—	
1848 Spring	4	—	2	2	—	
1848 Summer	4	—	6	3	3	
1848 Winter	—	—	—	—	—	
1849 Spring	6	—	—	—	—	
1849 Summer	6	—	2	2	—	
1849 Winter	—	—	—	—	—	
1850 Spring	4	—	2	2	—	
1850 Summer	5	1	4	3	—	
1850 Winter	—	—	—	—	—	
1851 Spring	—	—	3	3	—	
1851 Summer	3	—	4	4	—	
1851 Winter	—	—	—	—	—	
1852 Spring	13	—	7	6	—	
1852 Summer	4	—	13	1	—	
1852 Winter	—	—	—	—	—	
1853 Spring	5	—	8	6	—	
1853 Summer	5	—	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	1	—	4	2	—	
1854 Summer	1	—	4	3	—	
1854 Winter	—	—	—	—	—	
1855 Spring	8	—	1	1	—	
1855 Summer	—	—	1	1	—	
1855 Winter	—	—	—	—	—	
1856 Spring	—	—	—	—	—	
1856 Summer	—	—	1	1	—	
1856 Winter	—	—	2	2	—	
Totals	108	3	102	78	4	
PEMBROKESHIRE AND TOWN OF HAVERFORDWEST.						
1845 Spring	5	3	2	2	—	
1845 Summer	—	6	5	4	1	
1845 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
PEMBROKESHIRE AND TOWN OF HAVERFORDWEST—*cont.*						
1846 Spring	15	—	6	6	—	
1846 Summer	9	—	4	3	—	
1846 Winter	—	—	—	—	—	
1847 Spring	34	—	3	3	—	
1847 Summer	5	—	1	1	—	
1847 Winter	—	—	—	—	—	
1848 Spring	2	—	—	—	—	
1848 Summer	6	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	12	—	1	—	—	
1849 Summer	4	—	4	4	—	
1849 Winter	—	—	—	—	—	
1850 Spring	12	—	2	1	—	
1850 Summer	7	—	3	3	—	
1850 Winter	—	—	—	—	—	
1851 Spring	5	10	4	3	—	
1851 Summer	7	—	1	1	—	
1851 Winter	—	—	—	—	—	
1852 Spring	26	—	3	2	—	
1852 Summer	8	—	2	1	—	
1852 Winter	—	—	—	—	—	
1853 Spring	34	4	5	5	—	
1853 Summer	3	—	—	—	—	
1853 Winter	—	—	—	—	—	
1854 Spring	22	3	2	2	—	
1854 Summer	4	—	1	1	—	
1854 Winter	—	—	—	—	—	
1855 Spring	13	—	1	—	1	
1855 Summer	5	—	1	1	—	
1855 Winter	—	—	—	—	—	
1856 Spring	16	—	2	2	—	
1856 Summer	9	—	—	—	—	
1856 Winter	—	—	—	—	—	
Totals	263	26	53	45	2	
GLAMORGANSHIRE ASSIZES.						
1845 Spring	39	—	7	7	—	
1845 Summer	7	—	12	9	1	
1845 Winter	—	—	—	—	—	
1846 Spring	27	—	9	8	—	
1846 Summer	6	—	6	6	—	
1846 Winter	—	—	—	—	—	
1847 Spring	42	—	7	7	—	
1847 Summer	21	—	7	5	—	
1847 Winter	—	—	—	—	—	
1848 Spring	35	5	13	9	1	
1848 Summer	28	3	8	7	1	
1848 Winter	—	—	—	—	—	
1849 Spring	26	—	8	6	—	
1849 Summer	31	8	9	8	1	
1849 Winter	—	—	—	—	—	
1850 Spring	29	—	5	4	—	
1850 Summer	19	6	10	10	—	
1850 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.		Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
		Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Glamorganshire Assizes—*cont.*							
1851	Spring	34	10	12	12	—	
	Summer	25	—	2	2	—	
	Winter	—	—	—	—	—	
1852	Spring	49	—	5	3	—	
	Summer	18	6	4	3	—	
	Winter	—	—	—	—	—	
1853	Spring	18	5	8	6	—	
	Summer	29	13	9	7	1	
	Winter	—	—	—	—	—	
1854	Spring	63	7	3	2	—	
	Summer	75	—	4	2	1	
	Winter	—	—	—	—	—	
1855	Spring	51	2	6	5	—	
	Summer	39	—	8	8	—	
	Winter	24	—	—	—	—	
1856	Spring	55	16	12	5	7	
	Summer	29	—	7	7	—	
	Winter	13	—	—	—	—	
Totals		832	81	181	148	13	

SUMMARY OF SOUTH WALES CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.	Average for each Assize.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Total of 12 Years.	
							days.hours.
Glamorganshire:—							
Swansea	468	45	97	74	8	83	6 4
Cardiff	364	36	84	74	5	78	5 8
Haverfordwest and Town	263	20	53	45	2	85	3 4
Cardigan	108	3	102	78	4	81	3 3
Carmarthen	173	1	151	126	5	109	4 4
Brecon	233	39	101	89	4	86	3 5
Presteign	96	5	24	22	1	71	2 8
Chester and City	—	—	—	—	—	—	—
Totals	1,705	149	612	508	29	593	29 7

As no minute has ever been kept of the number of days occupied in the Civil business, and as the Civil business in the South Wales Circuit follows the Criminal business, I am unable to furnish an account of the actual time expended in the transaction of business, and therefore have given the average number of days and hours as near as possible as calculated from one commission day to another. With regard to Presteign I think it right to observe that the time allowed has rarely been entirely occupied by the despatch of business. Two days has usually proved sufficient. I should also observe that days are not a constant and fixed quantity, on some occasions not more than seven or eight hours, on some occasions as many as fourteen hours out of the day have been spent in Court. In stating the average I have calculated nine hours as one day.

(Signed) H. H. VAUGHAN,
Clerk of the Crown and Clerk of the Assizes.

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

NORTHERN CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.	REMARKS.
	Before Judges.	Before other Commissioners.	Number Entered. *	Number tried.†			
LANCASTER ASSIZES.							
1845 Spring	18	—	4	4	—	2	*This Return comprises both causes from the Courts at Westminster, and causes in the Court of Common Pleas at Lancaster. They are distinguished in the Summary. In the number of days given as the duration of the assizes the commission days are included but Sundays are not. †This Return includes prisoners who pleaded guilty as well as those who were tried.
1845 Summer	7	—	16	14	—	3	
1845 Winter	—	—	—	—	—	—	
1846 Spring	25	—	14	12	—	4	
1846 Summer	12	—	13	14	—	5	
1846 Winter	—	—	—	—	—	—	
1847 Spring	22	—	15	14	—	4	
1847 Summer	14	—	10	8	—	2	
1847 Winter	—	—	—	—	—	—	
1848 Spring	33	1	6	6	—	2	
1848 Summer	20	—	13	11	—	4	
1848 Winter	—	—	—	—	—	—	
1849 Spring	27	—	11	10	—	4	
1849 Summer	15	—	11	10	—	3	
1849 Winter	—	—	—	—	—	—	
1850 Spring	11	—	9	8	—	3	
1850 Summer	21	—	15	13	—	4	
1850 Winter	—	—	—	—	—	—	
1851 Spring	36	—	3	3	—	2	
1851 Summer	19	—	8	7	—	4	
1851 Winter	—	—	—	—	—	—	
1852 Spring	16	—	6	5	—	3	
1852 Summer	16	—	9	9	—	3	
1852 Winter	—	—	—	—	—	—	
1853 Spring	19	—	5	5	—	3	
1853 Summer	25	—	7	6	—	3	
1853 Winter	—	—	—	—	—	—	
1854 Spring	13	—	9	9	—	3	
1854 Summer	28	4	21	15	—	4	
1854 Winter	—	—	—	—	—	—	
1855 Spring	17	—	7	5	—	3	
1855 Summer	38	—	3	3	—	2	
1855 Winter	—	—	—	—	—	—	
1856 Spring	17	—	9	9	—	4	
1856 Summer	8	—	5	5	—	3	
1856 Winter	—	—	—	—	—	—	
Totals	477	5	229	205	—	77	

LIVERPOOL ASSIZES.			‡ 1st List.	2d List.	† 1st List.	2d List.			
1845 Spring	78	—	31	106	26	64	4	18	‡This Return comprises both causes from the Courts at Westminster and causes in the Court of Common Pleas at Lancaster. They are distinguished in the Summary. The causes are entered in two lists. The first list containing the causes in which the plaintiffs attorneys or the plaintiffs themselves when suing in person, reside within the Hundred of Salford, and the second list containing those causes in which the plaintiffs attorneys, or the plaintiffs themselves, when suing in person, reside within the Hundred of West Derby or elsewhere than in the
1845 Summer	98	—	38	97	30	52	—	13	
1845 Winter	79	—	—		—		—	—	
1846 Spring	62	16	59	115	49	62	1	15	
1846 Summer	67	—	60	124	43	61	1	17	
1846 Winter	66	—	—		—		—	—	
1847 Spring	86	—	32	101	24	45	2	14	
1847 Summer	85	33	27	86	22	45	—	11	
1847 Winter	103	—	—		—		—	—	
1848 Spring	115	—	32	100	29	58	—	14	
1848 Summer	136	13	40	81	33	45	—	15	
1848 Winter	132	—	—		—		—	—	
1849 Spring	81	—	21	73	17	40	—	16	
1849 Summer	115	14	27	75	21	39	1	14	
1849 Winter	87	—	—		—		—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.				Number of Remanets.	Number of Days.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.		Number tried.				
LIVERPOOL ASSIZES—*cont.*			1st List.	2d List.	1st List.	2d List.			
1850 Spring	73	—	31	67	23	43	—	15	Hundred of Salford. This arrangement has prevailed since March Assizes, 1842. At the March Assizes, 1856 further regulations were adopted for the better conduct of the business, and a copy of the order made on the subject accompanies this Return. The remanets are all remanets by consent. In the number of days given as the duration of the assizes the commission days are included, but Sundays are not.
1850 Summer	116	—	18	49	14	31	—	10	
1850 Winter	118	—	—	—	—	—	—	—	
1251 Spring	107	—	24	56	22	47	—	17	
1251 Summer	108	24	26	49	22	27	—	13	
1251 Winter	90	—	—	—	—	—	—	—	
1852 Spring	125	—	35	54	28	35	—	16	
1852 Summer	125	29	21	55	21	27	—	12	
1852 Winter	118	—	—	—	—	—	—	—	
1853 Spring	120	—	30	69	29	42	—	15	
1853 Summer	95	24	32	84	29	53	—	16	
1853 Winter	91	—	—	—	—	—	—	—	
1854 Spring	107	—	33	86	27	58	1	23	
1854 Summer	126	—	28	90	25	54	—	17	
1854 Winter	128	—	—	—	—	—	—	—	
1855 Spring	116	—	35	84	29	34	1	21	
1855 Summer	109	—	34	115	26	70	—	16	
1855 Winter	90	47	—	—	—	—	—	—	
1856 Spring	116	—	32	70	26	41	1	14	
1856 Summer	124	50	36	66	28	45	—	15	
1856 Winter	63	51	—	—	—	—	—	—	
Total	3,655	301	782	1,952	643	1,128	12	367	
			2,734		1,771				

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners	Number entered.	Number tried.		
DURHAM ASSIZES.						
1845 Spring	18	—	19	18	—	1 Record withdrawn, 2 Causes tried in Crown Court.
1845 Summer	40	—	20	18	1	1 Record withdrawn.
1845 Winter	—	—	—	—	—	
1846 Spring	49	—	21	17	1	3 Records withdrawn.
1846 Summer	57	—	26	19	—	7 Records withdrawn.
1846 Winter	—	—	—	—	—	
1847 Spring	25	—	21	20	1	10 Causes tried in Crown Court.
1847 Summer	42	—	14	11	1	2 withdrawn, 2 tried in Crown Court.
1847 Winter	—	—	—	—	—	
1848 Spring	47	18	20	17	—	3 withdrawn.
1848 Summer	60	—	17	14	—	3 withdrawn.
1848 Winter	—	—	—	—	—	
1849 Spring	33	6	18	16	—	2 withdrawn, 2 tried in Crown Court.
1849 Summer	26	—	23	19	—	4 withdrawn.
1849 Winter	—	—	—	—	—	
1850 Spring	33	—	17	15	—	2 withdrawn, 2 tried in Crown Court.
1850 Summer	54	4	15	11	—	4 withdrawn.
1850 Winter	—	—	—	—	—	
1851 Spring	50	—	11	10	—	1 withdrawn.
1851 Summer	54	—	11	10	1	
1851 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
DURHAM ASSIZES—*cont.*						
1852 Spring	58	—	14	14	—	
1852 Summer	40	—	12	11	—	1 withdrawn.
1852 Winter	—	—	—	—	—	
1853 Spring	50	—	10	10	—	
1853 Summer	46	—	9	7	—	2 withdrawn.
1853 Winter	—	—	—	—	—	
1854 Spring	23	—	9	8	—	1 withdrawn.
1854 Summer	54	—	12	11	—	1 withdrawn.
1854 Winter	—	—	—	—	—	
1855 Spring	65	—	12	12	—	1 Cause tried in Crown Court.
1855 Summer	35	—	10	10	—	
1855 Winter	52	—	—	—	—	
1856 Spring	52	—	7	7	—	
1856 Summer	37	8	17	15	1	1 withdrawn.
1856 Winter	32	27	—	—	—	
Totals	1,132	63	365	320	6	39 withdrawn.
WESTMORELAND ASSIZES.						
1845 Spring	2	—	3	3	—	
1845 Summer	6	—	2	2	—	
1845 Winter	—	—	—	—	—	
1846 Spring	9	—	—	—	—	
1846 Summer	12	—	4	4	—	
1846 Winter	—	—	—	—	—	
1847 Spring	4	—	—	—	—	
1847 Summer	7	—	4	2	—	2 Records withdrawn.
1847 Winter	—	—	—	—	—	
1848 Spring	9	—	3	3	—	
1848 Summer	10	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	18	—	—	—	—	
1849 Summer	9	—	3	3	—	
1849 Winter	—	—	—	—	—	
1850 Spring	14	—	2	2	—	
1850 Summer	5	—	—	—	—	
1850 Winter	—	—	—	—	—	
1851 Spring	9	—	—	—	—	
1851 Summer	8	—	2	2	—	
1851 Winter	—	—	—	—	—	
1852 Spring	5	—	2	2	—	
1852 Summer	13	—	2	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	6	—	—	—	—	
1853 Summer	4	—	1	1	—	
1853 Winter	—	—	—	—	—	
1854 Spring	10	—	3	1	—	2 Records withdrawn.
1854 Summer	2	—	1	1	—	
1854 Winter	—	—	—	—	—	
1855 Spring	6	—	—	—	—	
1855 Summer	3	—	1	1	—	
1855 Winter	—	—	—	—	—	
1856 Spring	3	—	—	—	—	
1856 Summer	2	—	2	2	—	
1856 Winter	—	—	—	—	—	
Totals	176	—	35	31	—	4 Records withdrawn.

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
CUMBERLAND ASSIZES.						
1845 Spring	21	—	2	2	—	
1845 Summer	16	—	7	5	—	2 Records withdrawn.
1845 Winter	—	—	—	—	—	
1846 Spring	24	—	9	8	—	1 Record withdrawn.
1846 Summer	29	—	8	8	—	
1846 Winter	—	—	—	—	—	
1847 Spring	18	—	9	8	—	1 Record withdrawn.
1847 Summer	17	—	5	5	—	
1847 Winter	—	—	—	—	—	
1848 Spring	20	5	4	4	—	
1848 Summer	23	—	7	7	—	
1848 Winter	—	—	—	—	—	
1849 Spring	28	—	3	3	—	
1849 Summer	16	—	8	8	—	
1849 Winter	—	—	—	—	—	
1850 Spring	33	—	7	6	—	1 Record withdrawn.
1850 Summer	12	—	5	5	—	
1850 Winter	—	—	—	—	—	
1851 Spring	23	6	5	5	—	
1851 Summer	23	—	7	7	—	
1851 Winter	—	—	—	—	—	
1852 Spring	25	—	5	4	—	1 Record withdrawn.
1852 Summer	18	—	9	9	—	
1852 Winter	—	—	—	—	—	
1853 Spring	20	—	6	5	—	1 Record withdrawn.
1853 Summer	13	—	4	4	—	
1853 Winter	—	—	—	—	—	
1854 Spring	37	—	4	4	—	
1854 Summer	24	—	9	8	—	1 Record withdrawn.
1854 Winter	—	—	—	—	—	
1855 Spring	34	—	3	3	—	
1855 Summer	20	—	7	7	—	
1855 Winter	—	—	—	—	—	
1856 Spring	22	—	4	4	—	
1856 Summer	10	—	2	2	—	
1856 Winter	—	—	—	—	—	
Totals	526	11	139	131	—	
NORTHUMBERLAND AND TOWN OF NEWCASTLE ASSIZES.						
1845 Spring	41	—	8	6	—	2 Records withdrawn.
1845 Summer	14	—	15	11	—	4 Records withdrawn.
1845 Winter	—	—	—	—	—	
1846 Spring	—	—	13	10	—	3 Records withdrawn.
1846 Summer	19	—	12	10	—	2 Records withdrawn.
1846 Winter	21	—	—	—	—	
1847 Spring	28	—	12	10	—	2 Records withdrawn.
1847 Summer	25	—	10	9	—	1 Record withdrawn.
1847 Winter	—	—	—	—	—	
1848 Spring	26	—	5	5	—	2 Records withdrawn.
1848 Summer	23	—	13	11	—	
1848 Winter	—	—	—	—	—	
1849 Spring	36	—	6	6	—	
1849 Summer	38	11	10	10	—	
1849 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
NORTHUMBERLAND AND TOWN OF NEWCASTLE ASSIZES—*cont.*						
1850 Spring	37	8	13	13	—	
1850 Summer	25	—	1	1	—	
1850 Winter	—	—	—	—	—	
1851 Spring	23	—	11	10	—	1 Record withdrawn.
1851 Summer	36	4	6	4	—	2 Records withdrawn.
1851 Winter	—	—	—	—	—	
1852 Spring	61	17	6	3	—	3 Records withdrawn.
1852 Summer	44	—	11	10	—	1 Record withdrawn.
1852 Winter	—	—	—	—	—	
1853 Spring	47	—	6	6	—	
1853 Summer	48	—	7	5	—	2 Records withdrawn.
1853 Winter	—	—	—	—	—	
1854 Spring	36	—	14	11	—	3 Records withdrawn.
1854 Summer	36	—	13	10	—	3 Records withdrawn.
1854 Winter	—	—	—	—	—	
1855 Spring	36	—	14	11	—	3 Records withdrawn.
1855 Summer	53	—	20	19	—	1 Record withdrawn.
1855 Winter	42	—	—	—	—	
1856 Spring	32	—	7	6	—	1 Record withdrawn.
1856 Summer	20	—	12	11	—	1 Record withdrawn.
1856 Winter	28	—	—		—	
Totals	875	40	245	208	—	37 Records withdrawn.
YORKSHIRE AND CITY OF YORK ASSIZES.						
1845 Spring	77	—	98	63	13	22 Records withdrawn.
1845 Summer	57	—	89	65	3	21 Records withdrawn.
1845 Winter	93	—	—	—	—	
1846 Spring	53	32	115	77	4	34 Records withdrawn.
1846 Summer	81	21	107	64	2	41 Records withdrawn.
1846 Winter	107	—	—	—	—	
1847 Spring	55	33	102	74	—	28 Records withdrawn.
1847 Summer	77	28	70	52	1	17 Records withdrawn.
1847 Winter	119	—	—	—	—	
1848 Spring	75	38	76	59	1	16 Records withdrawn.
1848 Summer	176	14	88	69	—	19 Records withdrawn.
1848 Winter	194	—	—	—	—	
1849 Spring	99	26	57	43	—	14 Records withdrawn.
1849 Summer	140	19	69	54	4	11 Records withdrawn.
1849 Winter	131	—	—	—	—	
1850 Spring	81	20	61	49	—	12 Records withdrawn.
1850 Summer	102	—	50	40	3	7 Records withdrawn.
1850 Winter	130	—	—	—	—	
1851 Spring	68	13	74	61	—	13 Records withdrawn.
1851 Summer	94	—	38	28	—	10 Records withdrawn.
1851 Winter	132	—	—	—	—	
1852 Spring	72	17	49	41	—	8 Records withdrawn.
1852 Summer	100	—	44	37	—	7 Records withdrawn.
1852 Winter	115	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
YORKSHIRE, AND CITY OF YORK—*cont.*						
1853 Spring	77	—	47	35	—	12 Records withdrawn.
1853 Summer	74	20	68	59	—	9 Records withdrawn.
1853 Winter	103	—	—	—	—	
1854 Spring	51	—	53	43	—	10 Records withdrawn.
1854 Summer	77	25	50	37	3	10 Records withdrawn.
1854 Winter	98	—	—	—	—	
1855 Spring	72	—	69	61	—	8 Records withdrawn.
1855 Summer	83	—	54	47	—	7 Records withdrawn.
1855 Winter	110	—	—	—	—	
1856 Spring	74	—	63	46	1	16 Records withdrawn.
1856 Summer	62	14	41	29	—	12 Records withdrawn.
1856 Winter	113	—	—	—	—	
Totals	3422	320	1632	1233	35	364 Records withdrawn.

SUMMARY OF NORTHERN CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.	
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Criminal.	Civil.
Liverpool	3655	301	—	—	—	—	—
Causes from the Courts at Westminster.			2282	1479			
Causes in the Court of Common Pleas at Lancaster.			452	292	12	374*	367
Lancaster	477	5	—	—	—	—	—
Causes from the Courts at Westminster.			91	77			
Causes in the Court of Common Pleas at Lancaster.			138	128	—	52†	77
Durham	1132	63	365	320	6	92	86
Appleby	176	—	35	31	—	27	15
Carlisle	526	11	139	131	—	61	72
Newcastle and Town	875	40	245	208	—	114	84
York and City	3422	320	1632	1233	35	360	288
Totals	10,263	740	5379	3899	53	1080	989

* In this number 374 are included 39 Sundays which intervened between the first and last days on which Prisoners were tried.

† In this number 52 is included one Sunday which intervened between the first and last days on which Prisoners were tried at the Spring Assizes 1854.

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

OXFORD CIRCUIT.

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Berkshire Assizes.						
1845 Spring	41	10	10	9	—	
1845 Summer	8	—	8	7	1	
1845 Winter	—	—	—	—	—	
1846 Spring	41	—	7	6	—	
1846 Summer	13	—	7	6	—	
1846 Winter	—	—	—	—	—	
1847 Spring	76	—	8	7	—	
1847 Summer	12	—	6	5	—	
1847 Winter	—	—	—	—	—	
1848 Spring	57	8	8	6	—	
1848 Summer	19	—	9	9	—	
1848 Winter	—	—	—	—	—	
1849 Spring	44	—	6	5	—	
1849 Summer	17	—	6	4	1	
1849 Winter	—	—	—	—	—	
1850 Spring	53	—	8	8	—	
1850 Summer	24	—	8	8	—	
1850 Winter	—	—	—	—	—	
1851 Spring	71	—	3	3	—	
1851 Summer	22	—	7	6	1	
1851 Winter	—	—	—	—	—	
1852 Spring	49	13	12	12	—	
1852 Summer	28	—	6	4	—	
1852 Winter	—	—	—	—	—	
1853 Spring	77	—	7	7	—	
1853 Summer	18	—	4	2	—	
1853 Winter	—	—	—	—	—	
1854 Spring	60	—	5	5	—	
1854 Summer	24	—	10	9	—	
1854 Winter	—	—	—	—	—	
1855 Spring	47	—	8	5	—	
1855 Summer	21	—	6	6	—	
1855 Winter	—	—	—	—	—	
1856 Spring	39	—	1	1	—	
1856 Summer	14	—	3	3	—	
1856 Winter	—	—	—	—	—	
Totals	875	31	163	143	3	
Oxfordshire Assizes.						
1845 Spring	34	8	3	3	—	
1845 Summer	21	—	7	5	—	
1845 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Oxfordshire Assizes —*cont.*						
1846 Spring	50	—	10	9	—	
1846 Summer	11	10	8	6	—	
1846 Winter	—	—	—	—	—	
1847 Spring	66	—	5	4	—	
1847 Summer	19	—	4	4	—	
1847 Winter	—	—	—	—	—	
1848 Spring	72	—	4	4	—	
1848 Summer	15	—	11	11	—	
1848 Winter	—	—	—	—	—	
1849 Spring	16	14	4	3	—	
1849 Summer	7	—	2	1	—	
1849 Winter	—	—	—	—	—	
1850 Spring	45	—	7	7	—	
1850 Summer	9	—	6	6	—	
1850 Winter	—	—	—	—	—	
1851 Spring	67	—	4	3	—	
1851 Summer	27	—	1	1	—	
1851 Winter	—	—	—	—	—	
1852 Spring	57	—	1	1	—	
1852 Summer	14	—	5	5	—	
1852 Winter	—	—	—	—	—	
1853 Spring	70	—	3	3	—	
1853 Summer	18	—	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	65	—	7	7	—	
1854 Summer	10	—	7	6	1	
1854 Winter	—	—	—	—	—	
1855 Spring	53	—	3	3	—	
1855 Summer	19	—	5	5	—	
1855 Winter	—	—	—	—	—	
1856 Spring	27	—	6	5	—	
1856 Summer	3	—	4	4	—	
1856 Winter	19	—	—	—	—	
Totals	814	32	120	109	1	
Worcestershire Assizes.						
1845 Spring	56	—	17	16	—	
1845 Summer	47	—	3	3	—	
1845 Winter	—	—	—	—	—	
1846 Spring	67	—	12	11	—	
1846 Summer	56	—	16	14	—	
1846 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number Entered.	Number tried.		
WORCESTERSHIRE ASSIZES—*cont.*						
1847 Spring	48	—	19	9	7	
1847 Summer	23	12	14	12	—	
1847 Winter	—	—	—	—	—	
1848 Spring	36	16	8	8	—	
1848 Summer	56	—	7	7	—	
1848 Winter	—	—	—	—	—	
1849 Spring	50	11	8	8	—	
1849 Summer	32	—	14	11	—	
1849 Winter	—	—	—	—	—	
1850 Spring	68	—	6	5	—	
1850 Summer	24	19	16	14	—	
1850 Winter	—	—	—	—	—	
1851 Spring	38	11	3	3	—	
1851 Summer	61	—	10	10	—	
1851 Winter	—	—	—	—	—	
1852 Spring	59	12	4	2	—	
1852 Summer	42	—	6	4	—	
1852 Winter	—	—	—	—	—	
1853 Spring	42	—	6	6	—	
1853 Summer	34	—	4	4	—	
1853 Winter	—	—	—	—	—	
1854 Spring	41	—	5	5	—	
1854 Summer	30	18	5	4	—	
1854 Winter	—	—	—	—	—	
1855 Spring	52	—	10	8	—	
1855 Summer	43	7	6	6	—	
1855 Winter	12	—	—	—	—	
1856 Spring	36	—	8	8	—	
1856 Summer	28	—	6	6	—	
1856 Winter	16	—	—	—	—	
Totals	1,097	106	213	184	7	
CITY OF WORCESTER ASSIZES.						
1845 Spring	1	13	—	—	—	
1845 Summer	4	—	—	—	—	
1845 Winter	—	—	—	—	—	
1846 Spring	21	—	1	1	—	
1846 Summer	1	2	1	1	—	
1846 Winter	—	—	—	—	—	
1847 Spring	—	13	—	—	—	
1847 Summer	1	2	1	1	—	
1847 Winter	—	—	—	—	—	
1848 Spring	—	3	—	—	—	
1848 Summer	2	—	2	1	—	
1848 Winter	—	—	—	—	—	
1849 Spring	2	4	1	1	—	
1849 Summer	7	—	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	17	—	—	—	—	
1850 Summer	1	2	—	—	—	
1850 Winter	—	—	—	—	—	
1851 Spring	20	—	—	—	—	
1851 Summer	3	5	2	1	—	
1851 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number Entered.	Number tried.		
CITY OF WORCESTER ASSIZES—*cont.*						
1852 Spring	6	—	—	—	—	
1852 Summer	3	—	—	—	—	
1852 Winter	—	—	—	—	—	
1853 Spring	11	—	—	—	—	
1853 Summer	6	—	—	—	—	
1853 Winter	—	—	—	—	—	
1854 Spring	12	—	—	—	—	
1854 Summer	7	—	—	—	—	
1854 Winter	—	—	—	—	—	
1855 Spring	24	—	1	1	—	
1855 Summer	6	—	1	1	—	
1855 Winter	2	—	—	—	—	
1856 Spring	6	—	1	1	—	
1856 Summer	4	—	—	—	—	
1856 Winter	6	—	—	—	—	
Totals	173	44	11	9	—	
STAFFORDSHIRE ASSIZES.						
1845 Spring	31	—	26	21	—	
1845 Summer	72	—	18	14	1	
1845 Winter	—	—	—	—	—	
1846 Spring	61	—	23	20	—	
1846 Summer	25	9	16	11	—	
1846 Winter	—	—	—	—	—	
1847 Spring	61	28	22	17	1	
1847 Summer	39	17	18	18	—	
1847 Winter	—	—	—	—	—	
1848 Spring	79	27	25	19	1	
1848 Summer	51	—	22	18	—	
1848 Winter	—	—	—	—	—	
1849 Spring	88	35	29	22	4	
1849 Summer	62	—	21	18	—	
1849 Winter	—	—	—	—	—	
1850 Spring	89	22	26	23	—	
1850 Summer	64	29	26	22	1	
1850 Winter	—	—	—	—	—	
1851 Spring	73	62	20	18	—	
1851 Summer	69	11	15	12	—	
1851 Winter	—	—	—	—	—	
1852 Spring	46	56	33	28	—	
1852 Summer	44	25	14	12	—	
1852 Winter	—	—	—	—	—	
1853 Spring	86	25	20	16	—	
1853 Summer	37	20	21	20	1	
1853 Winter	—	—	—	—	—	
1854 Spring	53	65	28	17	7	
1854 Summer	57	16	39	29	—	
1854 Winter	—	—	—	—	—	
1855 Spring	90	—	31	26	—	
1855 Summer	77	—	30	22	—	
1855 Winter	27	—	—	—	—	
1856 Spring	54	32	25	21	1	
1856 Summer	48	17	24	22	—	
1856 Winter	69	—	—	—	—	
Totals	1,552	496	572	466	17	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
SHROPSHIRE.						
1845 Spring	15	9	13	10	1	
1845 Summer	25	—	11	6	—	
1845 Winter	—	—	—	—	—	
1846 Spring	30	—	11	11	—	
1846 Summer	18	—	9	6	—	
1846 Winter	—	—	—	—	—	
1847 Spring	35	—	9	8	—	
1847 Summer	29	—	8	3	—	
1847 Winter	—	—	—	—	—	
1848 Spring	32	3	7	5	—	
1848 Summer	19	—	6	5	—	
1848 Winter	—	—	—	—	—	
1849 Spring	33	12	15	12	—	
1849 Summer	25	—	3	3	—	
1849 Winter	—	—	—	—	—	
1850 Spring	37	—	3	3	—	
1850 Summer	25	—	6	6	—	
1850 Winter	—	—	—	—	—	
1851 Spring	26	—	5	4	—	
1851 Summer	45	3	5	5	—	
1851 Winter	—	—	—	—	—	
1852 Spring	38	—	—	—	—	
1852 Summer	28	—	4	4	—	
1852 Winter	—	—	—	—	—	
1853 Spring	39	—	4	3	—	
1853 Summer	29	—	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	32	—	3	3	—	
1854 Summer	25	—	7	7	—	
1854 Winter	—	—	—	—	—	
1855 Spring	29	—	6	5	—	
1855 Summer	28	—	8	8	—	
1855 Winter	—	—	—	—	—	
1856 Spring	22	—	4	4	—	
1856 Summer	15	—	3	3	—	
1856 Winter	7	—	—	—	—	
Totals	686	27	148	127	1	
HEREFORDSHIRE ASSIZES.						
1845 Spring	31	—	2	2	—	
1845 Summer	17	—	4	4	—	
1845 Winter	—	—	—	—	—	
1846 Spring	19	—	5	4	—	
1846 Summer	24	—	16	14	—	
1846 Winter	—	—	—	—	—	
1847 Spring	16	7	12	10	—	
1847 Summer	28	—	6	5	—	
1847 Winter	—	—	—	—	—	
1848 Spring	36	5	6	6	—	
1848 Summer	30	—	3	2	—	
1848 Winter	—	—	—	—	—	
1849 Spring	27	9	3	2	—	
1849 Summer	19	—	10	8	—	
1849 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
HEREFORDSHIRE ASSIZES—*cont.*						
1850 Spring	20	—	6	4	—	
1850 Summer	18	—	4	3	—	
1850 Winter	—	—	—	—	—	
1851 Spring	30	—	5	4	1	
1851 Summer	24	—	4	3	—	
1851 Winter	—	—	—	—	—	
1852 Spring	23	—	2	2	—	
1852 Summer	21	—	3	3	—	
1852 Winter	—	—	—	—	—	
1853 Spring	21	—	3	2	—	
1853 Summer	29	—	2	2	—	
1853 Winter	—	—	—	—	—	
1854 Spring	5	—	8	7	—	
1854 Summer	19	—	4	4	—	
1854 Winter	—	10	—	—	—	
1855 Spring	13	—	3	3	—	
1855 Summer	17	—	3	3	—	
1855 Winter	16	—	—	—	—	
1856 Spring	15	—	3	3	—	
1856 Summer	16	—	3	3	—	
1856 Winter	13	—	—	—	—	
Totals	547	31	120	103	1	
MONMOUTHSHIRE ASSIZES.						
1845 Spring	39	8	8	7	—	
1845 Summer	22	—	7	7	—	
1845 Winter	—	—	—	—	—	
1846 Spring	55	4	10	9	—	
1846 Summer	18	—	8	7	—	
1846 Winter	—	—	—	—	—	
1847 Spring	81	5	8	6	—	
1847 Summer	34	—	7	7	—	
1847 Winter	—	—	—	—	—	
1848 Spring	49	22	7	6	—	
1848 Summer	35	—	6	6	—	
1848 Winter	—	—	—	—	—	
1849 Spring	51	—	3	3	—	
1849 Summer	34	—	9	7	—	
1849 Winter	—	—	—	—	—	
1850 Spring	45	7	5	5	—	
1850 Summer	31	30	5	5	—	
1850 Winter	—	—	—	—	—	
1851 Spring	31	—	5	3	—	
1851 Summer	47	6	4	4	—	
1851 Winter	—	—	—	—	—	
1852 Spring	44	—	2	2	—	
1852 Summer	40	—	7	6	—	
1852 Winter	—	—	—	—	—	
1853 Spring	30	—	3	2	—	
1853 Summer	32	—	2	2	—	
1853 Winter	—	—	—	—	—	
1854 Spring	42	—	5	5	—	
1854 Summer	46	—	8	7	—	
1854 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		
Monmouthshire Assizes—*cont.*						
1855 Spring	36	—	2	2	—	
1855 Summer	30	—	5	5	—	
1855 Winter	—	—	—	—	—	
1856 Spring	13	—	1	1	—	
1856 Summer	30	—	5	5	—	
1856 Winter	—	—	—	—	—	
Totals	915	82	132	119	—	
Gloucestershire Assizes.						
1845 Spring	76	—	31	26	—	
1845 Summer	68	—	27	19	—	
1845 Winter	—	—	—	—	—	
1846 Spring	74	—	35	28	—	
1846 Summer	56	—	34	28	—	
1846 Winter	—	—	—	—	—	
1847 Spring	45	31	34	26	—	
1847 Summer	62	—	19	17	—	
1847 Winter	—	—	—	—	—	
1848 Spring	56	—	21	18	—	
1848 Summer	69	—	18	17	—	
1848 Winter	—	—	—	—	—	
1849 Spring	69	—	13	11	—	
1849 Summer	59	—	13	13	—	
1849 Winter	—	—	—	—	—	
1850 Spring	57	15	25	18	—	
1850 Summer	53	31	16	16	—	
1850 Winter	—	—	—	—	—	
1851 Spring	65	30	17	16	—	
1851 Summer	80	—	15	14	—	
1851 Winter	—	—	—	—	—	
1852 Spring	69	7	10	8	—	
1852 Summer	58	16	14	12	—	
1852 Winter	—	—	—	—	—	
1853 Spring	80	—	21	17	—	
1853 Summer	34	18	14	11	—	
1853 Winter	—	—	—	—	—	
1854 Spring	60	—	29	23	—	
1854 Summer	54	—	14	11	—	
1854 Winter	—	—	—	—	—	
1855 Spring	54	—	27	23	—	
1855 Summer	52	—	24	23	—	
1855 Winter	15	—	—	—	—	
1866 Spring	48	—	19	17	—	
1866 Summer	35	—	16	14	—	
1866 Winter	26	—	—	—	—	
Totals	1,474	148	506	426	—	
City of Gloucester Assizes.						
1845 Spring	6	—	1	1	—	
1845 Summer	3	—	1	1	—	
1845 Winter	—	—	—	—	—	
1846 Spring	7	—	3	2	1	
1846 Summer	6	—	2	2	—	
1846 Winter	—	—	—	—	—	

2. Number of Prisoners tried, and Causes entered and tried, &c.—*continued.*

ASSIZES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	REMARKS.
	Before Judges.	Before other Commissioners	Number entered.	Number tried.		
CITY OF GLOUCESTER ASSIZES—*cont.*						
1847 Spring	7	3	2	2	—	
1847 Summer	19	—	1	1	—	
1847 Winter	—	—	—	—	—	
1848 Spring	10	—	1	1	—	
1848 Summer	8	—	—	—	—	
1848 Winter	—	—	—	—	—	
1849 Spring	8	—	3	2	—	
1849 Summer	9	—	—	—	—	
1849 Winter	—	—	—	—	—	
1850 Spring	1	3	2	1	—	
1850 Summer	—	5	—	—	—	
1850 Winter	—	—	—	—	—	
1851 Spring	—	8	—	—	—	
1851 Summer	8	—	—	—	—	
1851 Winter	—	—	—	—	—	
1852 Spring	1	7	2	1	—	
1852 Summer	2	8	2	2	—	
1852 Winter	—	—	—	—	—	
1853 Spring	6	—	2	2	—	
1853 Summer	—	2	3	3	—	
1853 Winter	—	—	—	—	—	
1854 Spring	—	—	—	—	—	
1854 Summer	5	—	—	—	—	
1854 Winter	—	—	—	—	—	
1855 Spring	5	—	—	—	—	
1855 Summer	1	1	1	1	—	
1855 Winter	2	—	—	—	—	
1856 Spring	—	—	—	—	—	
1856 Summer	2	—	1	1	—	
1856 Winter	—	—	—	—	—	
Totals	116	37	27	23	1	

SUMMARY OF OXFORD CIRCUIT.

COUNTIES.	Number of Prisoners tried.		Number of Records at Nisi Prius.		Number of Remanets.	Number of Days.*	
	Before Judges.	Before other Commissioners.	Number entered.	Number tried.		Criminal.	Civil.
Berks—							
Reading	487	31	66	58	—	39	29
Abingdon	388	—	97	85	3	47	44
Oxford	814	32	120	109	1	85	69
Worcester	1,097	106	213	184	7	108	84
City of Worcester	173	44	11	9	—	—	—
Stafford	1,552	496	572	466	17	172	157
Shrewsbury	686	27	148	127	1	86	61
Hereford	547	31	120	103	1	76	64
Monmouth	915	82	132	119	—	80	65
Gloucester	1,474	148	506	426	—	153	140
City of Gloucester	116	37	27	23	1	—	—
Totals	8,249	1,034	2,012	1,709	31	846	713

*Sundays are not included in the number of days.

COURT OF QUEEN'S BENCH.

(3.)—RETURN of the several Matters of Business herein specified, for Twelve Years, from 1845 to 1856, both years inclusive.

—	Number of original Writs of Summons issued.	Number of Final Judgments:			Total Number of Final Judgments.	Number of Demurrers, Special Cases, and Special Verdicts, set down for Argument.	Rules drawn up thereon.	Number of County Court Appeals set down for Argument.	Number of Motions for New Trials, to enter Verdicts, and the like.			Number of Special Rules other than those abolished by the Common Law Procedure Acts.	Number of Cases referred to the Master under the Common Law Procedure Act, 1854.	Number of Error and Appeal Cases.		Number of Days occupied.			
		By default.	On Demurrers, Special Cases, Special Verdicts, &c.	Other Judgments on Verdicts, Orders, &c.					Motions.	Absolute or discharged.	Refused or settled.			Set down.	Judgments.	In Banc, in Term.	In Banc, after Term.	In Error, in Term.	In Error, after Term.
1845	39,801	—	56	—	10,535	80	56	Nil.	135	111	55	1,008	—	15	9	78	29	—	7
1846	46,394	—	77	—	11,711	83	77	Nil.	87	98	99	889	—	13	8	79	24	—	9
1847	32,927	—	71	—	10,432	86	71	Nil.	102	82	69	844	—	16	15	80	29	—	9
1848	31,570	—	67	—	9,710	89	67	Nil.	103	84	78	757	—	18	11	78	29	—	10
1849	28,534	—	48	—	8,913	84	48	Nil.	99	77	65	692	—	17	12	78	26	—	9
1850	24,065	—	59	—	7,972	68	59	1	83	105	73	561	—	14	17	78	30	—	11
1851	21,091	—	77	—	7,048	74	77	12	58	69	51	365	—	8	11	78	15	—	13
1852	21,625	—	65	—	7,320	83	65	13	68	71	56	302	—	11	10	79	10	—	15
1853	23,213	5,839	53	3,587	9,479	58	53	7	72	72	34	265	—	14	13	79	3	—	12
1854	26,895	6,732	70	3,931	10,733	92	70	3	72	70	33	326	—	12	8	78	14	—	8
1855	27,907	7,522	78	3,546	11,146	102	78	6	66	75	33	269	*56	18	12	78	9	—	13
1856	29,607	8,919	70	2,345	11,334	71	70	2	78	71	27	322	*87	15	18	78	4	—	13
Totals -	353,629	29,012	791	13,409	116,333	970	791	44	10,23	985	673	6,600	143	171	144	941	222	—	129

* Note.—The number of hours occupied on the References was in 1855 - - - - 221
in 1856 - - - - 481

FORTUNATUS DWARRIS.
A. W. CROFT.
JAS. BUNCE.
C. R. TURNER.

COURT OF COMMON PLEAS.

(3.)—RETURN of the several Matters of Business herein specified, for Twelve Years, from 1845 to 1856, both years inclusive.

	Number of original Writs of Summons issued.	Number of Final Judgments.			Total Number of Final Judgments.	Number of Demurrers, Special Cases, and Special Verdicts, set down for Argument.	Rules drawn up thereon.	Number of County Court Appeals set down for Argument.	Number of Motions for New Trials, to enter Verdicts, and the like.			Number of Special Rules other than those abolished by the Common Law Procedure Acts.	Number of Cases referred to the Master under the Common Law Procedure Act, 1854.	Number of Error and Appeal Cases.		Number of Days occupied.			
		By default.	On Demurrers, Special Cases, Special Verdicts, &c.	Other Judgments on Verdicts, Orders, &c.					Motions.	Absolute or discharged.	Refused or settled.			Set down.	Judgments.	In Banc, in Term.	In Banc, after Term.	In Error, in Term.	In Error, after Term.
1845	18,222	2,064	49	2,173	4,286	54	49	—	82	58	24	487	—	4	2	78	3	—	14
1846	24,153	2,638	62	2,261	4,961	63	62	—	97	73	24	543	—	2	5	79	3	—	18
1847	19,908	2,639	48	2,721	5,408	59	48	—	115	82	33	488	—	6	2	80	6	—	20
1848	18,152	2,156	30	2,591	4,777	53	30	—	109	75	34	478	—	3	5	78	18	—	18
1849	16,083	2,019	66	2,199	4,284	49	66	—	77	34	43	456	—	1	3	78	19	—	17
1850	14,964	1,855	68	2,063	3,986	55	68	—	76	49	27	450	—	4	4	78	9	—	15
1851	13,918	1,605	42	2,020	3,667	33	42	4	70	45	25	320	—	7	2	78	5	—	17
1852	17,332	2,547	30	1,901	4,478	29	30	8	60	34	26	299	—	9	9	78	5	—	13
1853	15,887	4,279	26	1,639	5,944	32	26	5	50	30	20	239	—	2	4	79	—	—	10
1854	17,529	4,731	29	1,688	6,448	38	29	4	51	37	14	227	4	1	1	77	—	—	10
1855	17,969	5,113	42	1,481	6,636	42	42	6	61	43	18	273	27	7	4	78	1	—	12
1856	17,665	4,998	41	1,057	6,096	38	41	6	78	52	26	305	*57	14	9	78	3	—	13
Totals -	211,782	36,644	533	23,794	60,971	545	533	33	926	612	314	4,565	88	60	50	939	72	—	177

* It may not be considered unworthy of remark that, the time occupied in some of these references was very considerable, extending in—

One Case over 39 hours
" " 40 "
" " 34 "
" " 36 "

while many of them have occupied from 6 to 9 hours.

2d January 1857.

ALAN A. PARK.
J. H. CANCELLOR.
JULIUS TALBOT AIREY.

COURT OF EXCHEQUER—PLEA SIDE.

(3.)—Return of the several Matters of Business herein specified, for Twelve Years, from 1845 to 1856, both years inclusive.

—	Number of original Writs of Summons issued.	Number of Final Judgments.			Total Number of Final Judgments.	Number of Demurrers, Special Cases, and Special Verdicts, set down for Argument.	Rules drawn up thereon.	Number of County Court Appeals set down for Argument.	Number of Motions for New Trials, to enter Verdicts, and the like.			Number of Special Rules other than those abolished by the Common Law Procedure Acts.	Number of Cases referred to the Master under the Common Law Procedure Act, 1854.	Number of Error and Appeal Cas. s.		Number of Days occupied.			
		By default.	On Demurrers, Special Cases, Special Verdicts, &c.	Other Judgments on Verdicts, Orders, &c.					Motions.	Absolute or discharged.	Refused or settled.			Set down.	Judgments.	In Banc, in Term.	In Banc, after Term.	In Error, in Term.	In Error, after Term.
1845	44,881	5,152	89	4,653	9,894	124	89	—	175	103	72	649	—	7	3	78	32	4	13
1846	57,653	6,386	106	5,116	11,608	171	106	—	196	115	81	720	—	10	3	79	22	4	15
1847	43,277	5,369	119	5,289	10,777	144	119	—	203	98	105	807	—	8	10	80	22	4	19
1848	40,873	4,783	100	5,492	10,375	163	100	—	186	107	79	718	—	10	10	78	26	4	16
1849	39,148	4,346	123	4,643	9,112	137	123	—	209	114	95	619	—	9	11	78	39	4	14
1850	36,856	4,269	87	4,692	9,048	120	87	—	198	93	105	507	—	19	9	78	29	4	10
1851	31,723	3,571	63	4,015	7,649	75	70	7	168	87	81	408	—	8	18	78	18	4	14
1852	30,714	4,465	58	3,591	8,114	67	68	9	130	75	55	378	—	7	7	79	11	6	16
1853	34,328	9,342	49	3,260	12,651	58	53	7	130	87	43	272	—	6	9	79	4	14	2
1854	41,850	11,662	58	3,617	15,337	53	69	9	141	91	50	232	—	6	13	78	21	10	6
1855	45,637	13,215	52	3,339	16,606	79	58	11	110	71	39	398	167	11	10	78	18	12	7
1856	45,385	14,313	67	2,389	16,769	82	71	2	131	92	39	323	123	20	18	78	9	10	8
Totals -	492,325	86,873	971	50,096	137,940	1,273	1,013	45	1,977	1,133	844	6,031	290	121	121	941	251	80	140

Note—The large increase of Writs of Summons in 1846 is to be attributed to the numerous actions for Calls on shares, and other actions arising out of Railway Transactions in that year.

W. H. Walton.
W. F. Pollock.
John C. Templer.
George Pollock.

(4.)—CROWN OFFICE.

RETURN from the CROWN OFFICE of the several Matters of Business hereunder specified, for Twelve Years, from 1845 to 1856, both years inclusive.

Date.	Number of					Number of Rules.		Average Number of Days occupied per Term and Sittings after.	
	Writs of Certiorari to remove Indictments.	Cases in Crown Paper for Argument.	Informations.	Writs of Mandamus.	Motions made on the Crown Side of the Court.	Granted.	Absolute or Discharged.	In Term.	After Term.
1845	54	75	4	32	467	432	236	No account has been kept of the number of days occupied per term and Sittings after in Business on the Crown Side of the Court; the business on the Crown Side and Civil Side having been taken indiscriminately with the exception of two Days in each week (exclusive of the first four and last four Days of each Term) devoted to the Crown Paper.	
1846	65	71	2	34	450	431	235		
1847	71	62	8	27	453	422	242		
1848	56	59	8	27	433	412	235		
1849	56	49	2	31	419	395	241		
1850	56	43	7	24	391	360	202		
1851	58	56	8	30	484	442	251		
1852	42	46	12	27	440	398	196		
1853	50	43	13	16	343	329	164		
1854	49	47	7	12	372	343	155		
1855	35	37	8	15	273	200	140		
1856	24	42	2	22	279	232	125		
Totals	616	630	81	297	4,804*	4,396	2,422		

* This does not include motions of course.

CHAS. F ROBINSON.
WM. SAML. JONES.
ARTHUR B. CORNER.

(5.)—QUEEN'S REMEMBRANCER'S OFFICE.

RETURN of the Number of Informations, Verdicts, Motions, &c., on the Revenue Side of the COURT of EXCHEQUER, for Twelve Years, from 1845 to 1856, both Years inclusive.

Years.	Number of			Number of Orders in Court.			Number of Petitions, Special Cases, Special Verdicts, Demurrers, &c. set down.	Sittings in Banco Average Number of Days occupied.		Sittings at Nisi Prius upon Revenue Causes Average Number of Days occupied.		Number of Orders granted at Chambers and elsewhere than in Court.	Sittings in Error. Average Number of Days occupied.
	Informations filed.	Verdicts of all kinds taken.	Motions made upon Verdicts.	Granted.	Absolute.	Discharged.		In Term.	After Term.	In Middx.	At the Assizes.		
1845	194	20	5	178	123	3	4	13	1	10	—	162	1
1846	165	20	4	168	140	4	2	4	½ Day	12	—	144	—
1847	135	15	1	64	184	2	4	4 or 5	½ Day	13	—	241	—
1848	124	20	2	176	150	1	7	4	2	12	—	139	—
1849	89	5	—	105	129	2	6	5	2	3	—	130	—
1850	216	19	1	96	82	1	—	4	—	10	—	56	—
1851	96	4	2	130	106	—	3	8	½ Day	13	—	89	1
1852	54	16	—	115	104	—	3	3	—	7	—	115	1
1853	61	4	—	167	138	—	9	4	¼ Day	3	—	89	—
1854	27	3	2	8	69	—	7	6	¼ Day	3	1	3	2
1855	23	9	1	5	35	1	11	2 or 3	1	5	2	5	—
1856	35	5	—	2	58	1	24*	4	¼ Day	4	—	9†	—

* Six of this number are fixed for Argument in Hilary Term, 1857. † These Orders being almost as "Of course" occupy but a very short time.

In the above Return, the Fiats for Extents and other Writs are not included; neither are the Signatures of the Barons, which are affixed to a few other descriptions of Documents included in the Return.

In the Columns of "Numbers of Orders in Court, Granted and Absolute," and "Number of Orders granted at Chambers, &c.," a large proportion were "Orders of Course" for the recovery of Legacy Duties; but since the passing of the Succession Duty Act in 1853 those duties are sued for by Special Writ under that Act.

H. W. VINCENT,
Q. R.

Appeals from the Decisions of the Revising Barristers under Stat. 6 Vict. c. 18.

		Set down for Argument.	Rules drawn up thereon.
In the Year	1845	36	48
"	1846	23	35
"	1847	15	13
"	1848	6	8
"	1849	4	4
"	1850	2	1
"	1851	9	6
"	1852	10	8
"	1853	1	1
"	1854	2	2
"	1855	6	4
"	1856	7	8
		121	138

J. H. Cancellor,
Master.

(7.)—NISI PRIUS SITTINGS IN MIDDLESEX AND LONDON.

Return of the Number of Causes entered and tried, Remanets, &c., and of the days occupied in the Trial of Causes in Middlesex and London for Twelve Years, from 1845 to 1856, both years inclusive.

Queen's Bench.

Date.	Number of			Number of Days occupied.		Number of Days when Two Judges sat at Nisi Prius.	Number of Causes tried by a Judge without a Jury.
	Causes entered.	Tried.	Remanets.	In Term.	Out of Term.		
1845	899	432	—	40	71	—	—
1846	1,179	482	—	34	77	—	—
1847	1,109	391	—	38	76	—	—
1848	1,193	437	—	38	78	—	—
1849	1,006	415	—	34	77	—	—
1850	822	407	—	30	74	—	—
1851	795	384	—	27	65	—	—
1852	757	402	—	37	72	—	—
1853	878	471	—	55	72	—	—
1854	994	467	—	57	73	—	—
1855	873	476	—	49	72	20	2
1856	716	425	—	42	68	19	2
Totals -	11,221	5,189		481	875	39	4

Common Pleas.

1845	478	274	294	25	66	—	—
1846	673	287	518	26	73	—	—
1847	747	322	1,111	35	87	—	—
1848	745	346	983	36	82	—	—
1849	658	282	829	30	76	—	—
1850	592	277	964	39	75	—	—
1851	549	305	480	32	66	—	—
1852	450	252	169	37	52	—	—
1853	628	342	234	41	72	—	—
1854	675	355	269	48	66	—	—
1855	577	321	171	41	64	—	—
1856	542	318	215	41	71	4	2
Totals -	7,314	3,681	6,237	431	850	4	2

(7.)—NISI PRIUS SITTINGS IN MIDDLESEX AND LONDON—*continued.*

Date.	Number of			Number of Days occupied.		Number of Days when Two Judges sat at Nisi Prius.	Number of Causes tried by a Judge without a Jury.
	Causes entered.	Tried.	Remanets.	In Term.	Out of Term.		
			EXCHEQUER.				
1845	993	482	168	45	74	—	—
1846	1,327	567	483	51	74	—	—
1847	1,391	564	634	51	77	—	—
1848	1,457	563	883	58	78	—	—
1849	1,184	482	661	55	77	—	—
1850	1,105	517	521	52	80	—	—
1851	863	400	230	47	70	—	—
1852	856	440	203	46	73	—	—
1853	1,107	552	246	53	72	—	—
1854	1,155	552	258	53	67	5	—
1855	1,234	510	190	42	72	33	5
1856	945	498	196	49	68	24	2
Totals	13,617	6,127	4,673	602	882	62	7

JUDGES CHAMBERS.

(8.)—RETURN of the NUMBER of SUMMONSES, ORDERS, and other Matters of Business at the JUDGES CHAMBERS from the Year 1852 to the Year 1856.

QUEEN'S BENCH.

Date.	Summonses.	Common Orders.	Special Orders.	Orders in Revenue and Legacy Duty Cases.	Affidavits filed on Application to Judge.	Exhibits before Judge.	Commissions granted by Judge.	Appointment of Commissioners.	Allowance of Byelaws and Tables of Fees.	Reports on Private Bills.	Attendances by Counsel.
1852	(No Return can be given for this Year.)										
1853	11,627	8,766	2,125	–	4,293	1,054	—	139	—	3	603
1854	17,312	13,319	2,850	–	5,688	1,475	—	151	—	5	1,094
1855	12,857	9,894	2,495	–	4,436	1,335	—	154	1	3	844
1856	15,538	11,853	3,867	–	6,599	1,803	—	158	—	2	1,267
Totals	57,334	43,832	11,337	–	21,016	5,667	—	602	1	13	3,808

It should be mentioned that this Return does not include any Business done where Fees are payable by any Government Department, as no Fees are payable thereon, and therefore no Account thereof kept, and shows only a portion of the Business transacted, and that it includes in this Court two only out of the Eight Periods during the Four Years in which one Judge has remained in Town and taken the Business of all the Courts.

COMMON PLEAS.

1852	—	—	—	—	—	—	—	—	—	—	—
1853	12,038	9,258	2,181	—	2,959	1,008	151	121	—	12	663
1854	13,725	11,002	2,917	—	4,049	964	113	132	—	5	927
1855	13,373	10,285	3,319	—	4,496	996	115	150	2	3	892
1856	12,267	8,708	3,288	—	4,933	1,249	110	169	1	5	1,129
Totals	51,403	39,253	11,705	—	16,437	4,217	489	572	3	25	3,611

EXCHEQUER OF PLEAS.

1852	No Return.										
1853	19,415	14,521	4,346	36	4,819	1,069	—	120	4	4	899
1854	17,789	13,560	2,179	—	4,768	861	—	122	3	7	704
1855	25,711	18,896	3,830	—	6,062	1,381	—	156	1	1	1,433
1856	16,403	11,840	4,162	—	6,869	929	—	158	1	—	787
Totals	79,318	58,817	14,517	36	22,518	4,240	—	556	9	12	3,823

(9.)—JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Date.	Number of Cases in which one or more Common Law Judges attended the Judicial Committee of the Privy Council.		Number of Days occupied.		Remarks.
	1 Judge.	2 Judges.	In Term.	Out of Term.	
1851	Baron Parke - 13 Lord Chief Baron - 6 Lord Chief Justice Common Pleas - 24 43	- -	- -	8 6 10 24	
1852	Baron Parke - 3 Lord Chief Justice Common Pleas - 9 12	- -	- -	2 3 5	
1853	Baron Parke - 2 Lord Chief Justice Common Pleas - 20 22	- -	- -	2 12 14	
1854	Baron Parke - 10 Lord Chief Justice Common Pleas - 3 13	- -	- -	11 6 17	
1855	Lord Chief Justice Common Pleas - 5	-	- -	3	
1856	Nil.	Nil.	Nil.	Nil.	
Totals	95	- -	- -	63	

HOUSE OF LORDS.

Date.	Cases in which the Judges were summoned.	Average Number of Judges attending.	Days occupied.		Remarks.
			In Term.	Out of Term.	
1851	8	8	1	8	
1852	7	10	Nil.	10	
1852–3	9	10	1	12	
1854	3	11	Nil.	8	
1854–5	6	10	Nil.	9	
1856	10	10	1	10	
Totals -	43	59	3	57	

COURT OF CHANCERY.

LORD CHANCELLOR.

Date.	Number of Cases in which one or more Common Law Judges sat with the Lord Chancellor.		Number of Days occupied.		Remarks.
	1 Judge.	2 Judges.	In Term.	Out of Term.	
1851	—	—	—	—	
1852	—	—	—	—	
1853	—	—	—	—	
1854	1	3	1	3	
1855	—	—	—	—	
1856	1	3	1	3	
Totals	2	6	2	6	

COURT OF CHANCERY—*continued.*

MASTER OF THE ROLLS.

No Common Law Judge has assisted Sir John Romilly, Master of the Rolls, since his Appointment on 28th March 1851.

22d Dec. 1856.

W. Geo. Brett,
Chief Secretary.

LORDS JUSTICES.

Date.	Number of Cases in which One or more Common Law Judges sat with the Lords Justices.		Number of Days occupied.		Remarks.
	1 Judge.	2 Judges.	In Term.	Out of Term.	
1851	—	—	—	—	
1852	—	—	—	—	
1853	—	—	—	—	
1854	—	1	—	1	
1855	—	4	—	4	
1856	—	—	—	—	
	—	5	—	5	

VICE CHANCELLOR KINDERSLEY.

Date.	Number of Cases in which One or more Common Law Judges sat with the Vice Chancellor Kindersley.		Number of Days occupied.		Remarks.
	1 Judge.	2 Judges.	In Term.	Out of Term.	
1851	—	—	—	—	
1852	—	—	—	—	
1853	—	—	—	—	
1854	—	—	—	—	
1855	—	—	—	—	
1856	One	—	One	—	
Totals -					

In the absence of H. T. Erskine, Esq., Secretary to Vice Chancellor Kindersley,
Thos. F. Ledieu.

VICE CHANCELLOR STUART.

Date.	Number of Cases in which one or more Common Law Judges sat with the Vice Chancellor Stuart.		Number of Days occupied.		Remarks.
	1 Judge.	2 Judges.	In Term.	Out of Term.	
1851	—	—	—	—	
1852	—	—	—	—	
1853	—	—	—	—	
1854	—	—	—	—	
1855	2	—	—	3	
1856	—	—	—	—	
Totals -	2			3	

Dugald Stuart, Secretary.

COURT OF CHANCERY.

VICE CHANCELLOR SIR W. P. WOOD.

Date.	Number of Cases in which One or more Common Law Judges sat with the Vice Chancellor Sir W. P. Wood.		Number of Days occupied.		Remarks.
	1 Judge.	2 Judges.	In Term.	Out of Term.	
1851	—	—	—	—	Vice Chancellor Wood succeeded the present Lord Justice Turner as Vice Chancellor at the commencement of 1853.
1852	—	—	—	—	
1853	None	None	—	—	
1854	—	—	—	—	
1855	—	—	—	—	
1856	One	None	None	Part of each of 2 days.	
Totals -	One	—	—	—	

(10.)—A RETURN of the ATTENDANCE of JUDGES at SERJEANTS' INN for the hearing of TAX CASES.

Years.	Number of Judges attending.		Number of Cases heard.	Number of Days occupied.
1847	1st Attendance	2	20	1
	2nd „	2	24	1
1848	1st „	2	29	1
	2nd „	2	14	1
1849	1st „	3	27	1
	2nd „	2	19	1
1850	1st „	3	22	1
	2nd „	2	23	1
1851	1st „	2	14	1
	2nd „	3	12	1
1852	1st „	3	26	1
	2nd „	2	35	1
	3rd „	3	17	1
1853	1st „	3	33	1
	2nd „	3	13	1
1854	1st „	2	8	1
	2nd „	2	20	1
1855	1st „	2	25	1
	2nd „	2	23	1
1856	1st „	3	21	1
	2nd „	3	—	—
	Total -		425	20

Particular Days of ATTENDANCE of JUDGES during 1856.

	Days on which Judges attended.
1856	2nd July.

8th January 1857.

J. TIMM,
Solicitor of Inland Revenue.

(11.)—CENTRAL CRIMINAL COURT.

RETURN of the NUMBER of PRISONERS tried before one or more of the JUDGES of the SUPERIOR COURTS, and of the Days occupied in such Trials for Twelve years, from 1845 to 1856, both years inclusive.

—	Number of Prisoners tried.	Number of Days occupied before		Total Number of Days occupied.	Usual Periods of the Year when Judges attend.	Remarks.
		One Judge.	Two or more Judges.			
1845	262	17	29	46	By s. 15. of the Central Criminal Court Act (4th & 5th Wm. cap. 36.) Sessions are required to be holden at least twelve times in every year. The periods of the year will appear by the accompanying List of Sessions for the year 1856 & 7 The Terms and Circuits make it necessary to fix the Sessions so as to interfere as little as possible with the other duties of the Judges. It will be observed that the Sessions always begin on Monday. The Judges do not attend until Wednesday.	The accompanying List of Sessions shows that much longer intervals elapse between some Sessions than others. Convenience would, I think, be felt by the Public, and a saving of expense arise from the Sessions being holden at equidistant periods; but for the reasons stated in the preceding Column such an arrangement of the Sessions is impossible in the existing state of things. Frequent discussions have arisen on the subject of Grand Juries. If the Legislature should think fit either wholly or partially to relieve them of the duties which they now perform, a great saving of time would result to all connected with the administration of Criminal Justice. In some of the latter years included in this Return the Judges occasionally sat separately in different Courts, but each day of such separate sittings has been considered as one day only. I have thought it however advisable to mention the circumstance, lest an incorrect conclusion should be drawn from the number of Prisoners tried with reference to the number of days sitting.
1846	269	19	26	45		
1847	226	21	25	46		
1848	303	28	28	56		
1849	179	20	23	43		
1850	212	19	19	38		
1851	210	17	24	41		
1852	170	22	9	31		
1853	161	12	21	33		
1854	295	22	7	29		
1855	157	24	8	32		
1856	174	18	26	44		
Total	2,618	239	245	484		

JOHN CLARK,
Clerk of the Central Criminal Court.

(12.)—CROWN CASES.

RETURN of the NUMBER of CROWN CASES RESERVED, Judgments given, Days occupied, &c., For Six Years, from 1851 to 1856, both Years inclusive.

Date.	Number.		Days occupied.		Number of Judges usually attending.	Remarks.
	Crown Cases reserved.	Judgments.	In Term.	Out of Term.		
1851	32	32	6	4	The number of Judges usually attending is never less than five, but that number is occasionally considerably increased.	I think it would conduce to the more satisfactory administration of Justice, were the cases reserved for the consideration of this Court, the decisions of which are binding on all other Criminal Courts, adjudicated upon only after hearing the arguments of Counsel on both sides. And I think the expense of such arguments may be defrayed out of the Grant of Parliament for Criminal Prosecutions without an Act of Parliament for the purpose.
1852	20	18	5	3		
1853	17	15	6	2		
1854	29	28	6	3		
1855	24	24	5	4		
1856	30	32	6	3		
Totals	152	149	34	19		

MARSHALL STRAIGHT,
Clerk of the said Court.

Returns as to the Arrears of Business in the Courts of Common Law prior to 1830, and at the present time.

The Returns furnished to the Common Law Commissioners in 1829 (see 1st Report, 20th Feb. 1829, page 112,) show, that in the Three Superior Courts of Common Law the Arrears were as follows :—

Courts.	Years.	Crown Paper.	Civil Paper.	New Trial Paper.		Peremptory Paper.		Cause Paper.		
				Civil.	Crown.	Civil.	Crown.	London.	Middlesex.	Total.
King's Bench	1824	6	6	16	3	24	13	198	150	348
	1825	13	22	20	4	26	10	228	263	491
	1826	4	11	16	1	16	9	139	160	299
	1827	1	10	41	1	22	9	311	110	421
	1828	5	44	48	1	23	16	260	129	389
Common Pleas	1824	—	—	—	—	5	—	2	—	2
	1825	—	—	—	—	9	—	8	1	9
	1826	—	—	—	—	7	—	13	2	15
	1827	—	—	—	—	8	—	11	1	12
	1828	—	—	26	—	7	—	63	46	109
Exchequer	There is no return of Arrears from this Court, but they are believed to be very small.									

The Arrears at the present time, Trinity Term, 1857, it the Three Courts are as follows :—

——	Banc.							Nisi Prius.				
	For Judgment.	Trinity Term, 1856.	Michaelmas Term, 1856.	Hilary Term, 1857.	Easter Term, 1857.	Trinity Term, 1857.	Total Arrears.	London.	Middlesex.	Staid by Injunction or Order.		Total Remanets.
										London.	Middlesex.	
Queen's Bench:—												
Peremptory Paper	—	—	—	—	—	—	—					
New Trials	1	—	2	—	24	—	27	27	20	7	7	47
Special Paper	—	—	—	—	1	13	1					
Common Pleas:—												
Peremptory Paper	—	—	—	—	—	—	—					
New Trials	6	—	—	5	23	—	34	10	9	4	—	19
Special Paper	3	—	—	—	6	6	9					
Exchequer:—												
Peremptory Paper	—	—	—	—	3	—	3					
New Trials	8	—	—	—	22	—	30	10	19	57	—	29
Special Paper	3	2	2	1	—	9	8					

RETURNS from the COURTS of QUEEN'S BENCH, COMMON PLEAS, and EXCHEQUER of the NUMBER of DEMURRERS and SPECIAL CASES set down for ARGUMENT in the Year 1851 (before the Abolition of SPECIAL DEMURRERS) and in the Year 1856.

COURT OF QUEEN'S BENCH.

Demurrers.

1851.		1856.	
Hilary Term	16	Hilary Term	8
Easter Term	22	Easter Term	20
Trinity Term	5	Trinity Term.	7
Michaelmas Term	11	Michaelmas Term	10
	54		45

Special Cases.

1851.		1856.	
Hilary Term	5	Hilary Term	7
Easter Term	6	Easter Term	8
Trinity Term	3	Trinity Term	8
Michaelmas Term	5	Michaelmas Term	3
	19		26

COURT OF COMMON PLEAS.

Demurrers set down for argument in,—

	1851.	1856.
Hilary Term	14	5
Easter Term	7	9
Trinity Term	4	9
Michaelmas Term	8	5
	33	28

Special Cases set down for argument in,—

	1851.	1856.
Hilary Term	4	4
Easter Term	3	3
Trinity Term	4	0
Michaelmas Term	5	3
	16	10

COURT OF EXCHEQUER.

Demurrers.

1851.		1856.	
Hilary Term -	11	Hilary Term -	15
Easter Term -	21	Easter Term -	25
Trinity Term -	8	Trinity Term -	12
Michaelmas Term	15	Michaelmas Term	12
	55		64

Special Cases.

1851.		1856.	
Hilary Term -	5	Hilary Term -	4
Easter Term -	8	Easter Term -	5
Trinity Term -	5	Trinity Term -	6
Michaelmas Term	1	Michaelmas Term	4
	19		19

TOTAL OF THE THREE COURTS.

	1851.	1856.
Demurrers for Arguments -	142	137
Decrease in 1856—5.		
Special Cases for Argument -	54	55
Increase in 1856—1.		

QUEEN'S BENCH.

THIS RETURN gives the Number of Cases standing in the New Trial Paper for Argument on the First Day of each Term for the following Years, and consequently would contain all Cases in arrear at that time.

1836.	
Hilary Term	144
Easter „	137
Trinity „	137
Michaelmas „	122
1837.	
Hilary Term	159
Easter „	151
Trinity „	181
Michaelmas „	150
1838.	
Hilary Term	167
Easter „	153
Trinity „	183
Michaelmas „	168
1839.	
Hilary Term	193
Easter „	168
Trinity „	207
Michaelmas „	156
1840.	
Hilary Term	184
Easter „	157
Trinity „	200
Michaelmas „	147
1841.	
Hilary Term	168
Easter „	144
Trinity „	184
Michaelmas „	82
1842.	
Hilary Term	111
Easter „	97
Trinity „	140
Michaelmas „	111
1843.	
Hilary Term	116
Easter „	92
Trinity „	115
Michaelmas „	82
1844.	
Hilary Term	75
Easter „	66
Trinity „	86
Michaelmas „	71
1845.	
Hilary Term	105
Easter „	109
Trinity „	164
Michaelmas „	118
1846.	
Hilary Term	121
Easter „	102
Trinity „	114
Michaelmas „	76
1847.	
Hilary Term	73
Easter „	62
Trinity „	78
Michaelmas „	67
1848.	
Hilary Term	65
Easter „	42
Trinity „	61
Michaelmas „	47
1849.	
Hilary Term	62
Easter „	51
Trinity „	94
Michaelmas „	59
1850.	
Hilary Term	88
Easter „	82
Trinity „	105
Michaelmas „	49

LONDON:
Printed by George E. Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

THIRD REPORT

FROM

HER MAJESTY'S COMMISSIONERS

FOR

CONSOLIDATING THE STATUTE LAW.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1857

2219

[*The Appendix will be printed separately.*]

THIRD REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY
IN HER HIGH COURT OF CHANCERY.

We, Your Majesty's Commissioners for Consolidating the Statute Law, do hereby humbly make this our Third Report to Your Majesty.

In our First Report (dated July 10, 1855) we gave a list of the works which we had caused to be undertaken down to that date, which were as follows :—

1. Consolidation of the National Debt Acts.
2. Consolidation of the Statutes relating to Masters and Servants or Workmen.
3. Consolidation of the Criminal Law (by Mr. J. J. Lonsdale).
4. Consolidation of the Stamp Laws.
5. Consolidation of the Statutes relating to Bills of Exchange and Promissory Notes.
6. Consolidation of the Statutes relating to Prisons.
7. Consolidation of the Law of Landlord and Tenant.
8. Consolidation of the Statutes relating to Leases by Ecclesiastical and Collegiate Corporations.
9. Bill to consolidate and amend the Copyhold Commissioners Acts.

As we have found it expedient, on further consideration, to modify in some respects the plan on which we were then proceeding, it is necessary that we should make a further statement as to the present state of the works referred to.

The Bills Nos. 1 and 6 in the above list, being Consolidations of the Statutes relating to the National Debt and to Prisons, we have not thought it expedient to revise at present, because we conceive that they can be brought forward more advantageously in connexion with the whole of the class or division of Law to which they respectively belong, after we have made some further progress in the general distribution of the contents of the Statutes upon fixed principles of arrangement. The Consolidation of the National Debt Acts has, however, been submitted to the Chancellor of the Exchequer for his consideration.

The Bill No. 2 is now in an advanced state of preparation.

The Bill No. 5 in the list, a Consolidation of the Law of Bills of Exchange and Promissory Notes, has been revised, and now forms part of a group of Consolidations of the Mercantile Law, to which we shall presently advert.

With regard to No. 3 in the above list, the Consolidation of the Criminal Law, Mr. J. J. Lonsdale, who was originally employed in the work, having been appointed a County Court Judge, was unable to proceed with it, and we thereupon entrusted the work to five other gentlemen, who have framed a consolidation of the general Criminal Law, so far as relates to indictable offences, in eight Bills, of which we shall speak more at length hereafter.

No. 4 in the above list, the Consolidation of the Stamp Laws, which was undertaken with the concurrence of the late Mr. John Wood, when Chairman of the Board of Inland Revenue, has been now completed and delivered to us, and has been referred to the present head of that Board, and to the Chancellor of the Exchequer, for consideration.

Nos. 7 and 8 in the list, the Consolidation of the Law of Landlord and

Tenant, and the Consolidation of the Statutes relating to Ecclesiastical a nd Collegiate Leases, have both been now completed and delivered to us by the draftsmen, and form part of a group of Consolidations of the Law of Property, to which we shall presently advert.

The Bill for consolidating and amending the Copyhold Commissioners Acts (No. 9 in the above list) has not yet been brought in by the Lord Chancellor, it having been deemed expedient by his Lordship to effect certain desired amendments of the Law by a short separate Act, which should afterwards be incorporated by consolidation with the other Acts.

We now proceed to state the progress that we have made since the date of our First Report.

I. We have given much consideration to the question of the appointment and functions of an Officer for the revision of current Legislation. The result of our deliberations was embodied in a separate Report, which we submitted to Your Majesty on the 5th of March 1856.

II. In order to assist us in arranging those parts of the contents of the Statute Book which it may be deemed expedient to consolidate, and with particular reference to the distinction pointed out in our Report of the 5th of March 1856 between the General Laws forming the permanent rule of civil conduct and those which are administrative, transitory, or local, we some time since gave instructions for an examination of the Statute Book, and for a classification in the manner explained in the last-mentioned Report of such Acts as are not repealed or expired, or have not otherwise ceased to be operative.

As this work is proceeded with, a "Register" is made of the Acts of each Session as they are examined, showing the Acts wholly or partially repealed or otherwise affected by the Acts registered, the subsequent Acts by which the Acts registered are themselves repealed or otherwise affected, and which of the Acts registered are expired, or are otherwise no longer in operation, and classifying all the Acts still in force.

In an Appendix to this Report will be found papers explaining more in detail the plan of the above work, together with a specimen of the Register.

The Register and classified arrangement, by affording a comprehensive view of the contents of the Statute Book, will greatly assist us in determining what portions of the Statute Law can be usefully consolidated; and when they have been completed, and when it has been ascertained further what Statutes are impliedly repealed, will in fact show at once what is the existing General Statute Law. The Register will also materially facilitate the actual work of consolidation; and, independently of this, we conceive that it would, if published, be found valuable as a work of reference for general use.

The classified arrangement in this Register of the existing Acts will also indicate the probable effect of a similar classification of future Acts.

III. Until the revision above mentioned has been completed, and the whole contents of the Statute Book are distributed under proper heads, there will be a risk that any groups of Statutes which may be selected for consolidation may ultimately be found to omit some enactments which ought to have been included under the same head, or to include some which ought to have been placed under some other head; we have not, however, thought it necessary to suspend the process of consolidation on this account, because it has appeared to us that there are some groups of Statutes which may be ascertained with tolerable accuracy, and must necessarily form separate heads under any arrangement, and which may therefore be usefully consolidated at once. The Statutes relating to *Criminal Law*, to *Mercantile Law*, and to the *Law of Property* seem to be distinct groups of this kind, and we have therefore completed the consolidation of a large section of one of those groups, and have made considerable progress with the other two, as we will now proceed to detail.

(1.) A Consolidation of the general Criminal Law, so far as relates to indictable offences, was laid on the table of the House of Lords by the

Lord Chancellor at the end of the Session of 1856 in eight Bills, comprising the following subjects :—

1. Offences against the Person.
2. Offences against Property.
3. Malicious injuries to Property.
4. Forgery.
5. Treason and offences against the State.
6. Offences of a public nature.
7. The Law of Accessories.
8. Criminal Procedure.

These Bills had been revised and settled with great care by Lord Wensleydale, the late Chief Justice Jervis, Sir FitzRoy Kelly, and Mr. Greaves.

On again revising these Bills, with a view to their introduction into Parliament in the present Session, we have, at the suggestion of the Lord Chancellor, been led to modify to a certain extent the views which we entertained when we first gave instructions for their preparation.

These Bills were originally drawn on the principle that no alteration should be made in the Law, and as little as possible in the language of the Statutes consolidated; and they were confined to indictable offences, in accordance with the division adopted by the former Criminal Law Commissioners; but it appeared to us, on further consideration, that if the restrictions thus imposed on the Draftsmen were relaxed to a moderate extent, the Bills would be much more satisfactory.

We would therefore propose, that the introduction of these Bills, and of all other Consolidation Bills, should be made an opportunity for effecting some improvements in the Law at the same time; not improvements which are the subject of any differences of opinion, or would raise any discussion, but merely remedying such defects as may be said to be accidental, and not owing to any deliberate intention on the part of the Legislature,—such as the removal of unnecessary variations between enactments relating to offences of the same nature, now existing in consequence of such enactments having been passed at different times, or framed by different persons, the supplying of admitted deficiencies, and the correction of admitted inconveniences.

We have also come to the conclusion that such other offences, though not indictable offences, as are now found in the Consolidation Acts of 1827, and other existing Statutes in connexion with indictable offences, and also those offences which have been made originally punishable on summary conviction, with a provision that a second or third offence shall be felony or misdemeanor, should be introduced into these Bills, so as to avoid as much as possible the inconvenience of breaking up a Statute, and leaving parts of it in force, which would increase instead of diminishing the complexity of the Statute Law.

We may observe, that the introduction of such alterations and additions would be in exact accordance with the recommendations made in 1854 by the Select Committee of the House of Lords on the Bills of the Criminal Law Commission, which we add in the Appendix to this our Report.

We have therefore caused a revision of the Criminal Law Bills to be commenced in accordance with the views above indicated; the revised Bills will be accompanied by a statement showing the alterations made; and they will shortly be ready to be submitted to Parliament.

In the course of this revision it has appeared to us that the law on certain special subjects, which had been included in the general Bills, would be more conveniently placed apart; we have therefore extracted and arranged in separate Bills the Game Laws, the Laws relating to Coin, to Libel, and to Perjury; other special branches of the Criminal Law, such as offences relating to the Army and Navy, to the Post Office, to the Customs, and other Public Departments, had been omitted in the first instance, and still remain to be made the subject of separate consolidations.

We have also given instructions for the preparation of a Bill to consolidate the General Statute Law relating to the procedure before magistrates in cases of summary conviction.

The eight Criminal Law Bills originally prepared related to England only, but as we conceived it to be very desirable, if possible, that the Law of England

and Ireland should be included in the same Bills, they were altered under the direction of the Attorney General for Ireland, so as to include the Statute Law of Ireland also. The view, however, which we thus obtained of the extent of the difference between the Laws of the two countries led us to the conclusion, that in a consolidation in which no material alterations of the Law were to be introduced, it would not be practicable to frame a Bill so as to include the Criminal Law of the two countries in a satisfactory manner; and though the modification of our Plan above spoken of has led to some change of our views in some instances, we still think that, generally, it would be best that the Bills should not, in the first instance, be made to apply to Ireland, and that the Law of Ireland should be subsequently consolidated in separate Bills. We would, however, express our hope that the consideration of the Bills, when framed on this principle, may induce the Legislature to assimilate the Laws of the two countries in all respects, except in the few cases in which substantial reasons can be assigned for the existing difference between them.

(2.) *Mercantile Law.*—Under this head we have given instructions for the preparation of Bills on the following subjects:—

Bills of Exchange and Promissory Notes.
Factors, Agents, and Mercantile Contracts.
Joint Stock Companies and Partnership.
Merchant Ships and Shipping.
Bankers and Banking.
Copyright.
Patents.
Carriers.
Pawnbrokers.
Innkeepers and Victuallers.
Harbours, Rivers, and Canals.

Most of these have been delivered to us by the draftsmen, and are now under consideration; the remainder are in a forward state. The Bill on Bills of Exchange and Promissory Notes is that mentioned in our First Report, as we have already explained.

(3.) *Law of Property.*—Under this head we have caused Bills to be prepared, embracing the following subjects:—

Landlord and Tenant.
Alienation, Dispositions by Tenants in Tail and Married Women, Improvement of Lands (5 Bills).
Fraudulent Assurances.
Mortgage and Registration of Judgments (2 Bills).
Devise and Testament (2 Bills).
Escheat, Tenure, and Trusts Estates (5 Bills).
Mortmain.
Joint Tenancy and Partition.
Attornment—Commons (3 Bills)*—Copyhold—Curtesy—Descent—Dow —Gavelkind—Maintenance—Waste.*
Ecclesiastical and Collegiate Leases.

The whole of these have been delivered to us by the draftsmen. The first and last of them are the Bills referred to in our First Report, as already explained.

In addition to these we have also caused to be prepared Bills to consolidate the Law relating to Aliens and Denizens, the Statutes of Limitation and Prescription, the Statutes relating to Bridges, the Statutes rendering written Documents necessary in certain cases, the Marriage Acts, the Statutes regulating Weights and Measures, and those relating to Libel; and a gentleman is engaged, under the direction of the Attorney General, in consolidating the Law relating to Insurance.

Mr. Tapping has also obligingly presented us with a Bill which he has prepared to consolidate and amend the Factory Acts; and Mr. Edward Cooke has also presented to us a Bill to consolidate and amend the Statutes relating to Insolvency.

In laying down rules for the Consolidation of the Statute Law we have felt it impossible to adopt one universal principle. It will be observed that our task is to consolidate the existing law, not to frame a code of general law founded on that which now exists, nor, in fact, to make a digest of the Statute Law with additions or alterations; we therefore find it necessary to treat the different classes of Statutes according to particular circumstances. Thus many Statutes of ancient date which have been through a course of ages expounded by the courts must now be regarded rather as the basis than as the whole structure of the existing law, and can hardly be made the subject of simple consolidation; though, if a digest of the existing law were to be made, their effect, coupled with the judicial expositions which they have from time to time received, might of course be embodied. In the class of Real Property Statutes, Magna Charta, the Statute Quia Emptores, and the Statute of Uses, may be taken as instances of the kind referred to; and we propose that these should, without enactment, be merely classified and reprinted, or, if it should be considered expedient to enact a classified arrangement of the law, they might be declared to be law in the manner which we have adopted with regard to the Statute of Treasons in the Criminal Law Bill relating to that subject.

There is another class of Statutes which it would not be possible to consolidate in the mere terms of the existing enactments; we allude to those which consist of a series of fragmentary alterations of or additions to the common law, such, for instance, as those which have been passed to regulate the relations of landlord and tenant. We have caused a Bill on that subject to be prepared, but the effect of so incoherent a collection of exceptions without the rules, and explanations or additions without the thing explained or added to, part in antiquated and part in modern language, is certainly not satisfactory; and it appears to us at least doubtful whether, in cases of this kind, anything like a complete and intelligible enactment can be produced unless we re-write the law, availing ourselves occasionally of our power to embody the common law.

With regard to another class, consisting of recent Statutes which stand alone, or which have been only slightly modified by subsequent amending Acts, a consideration of the Bills which have been prepared has led us to the conclusion that it is not necessary with these to go though the form of repeal and re-enactment; unless, indeed, it should ultimately be determined to re-write this class of Statutes for the purpose of adopting any amendments, or supplying any deficiencies discovered in them in the course of their practical application. As examples of this class we may mention the Statute of Wills of 1837, and the Act of 1833 to abolish Fines and Recoveries, and to substitute simpler modes of assurance. One section only (the ninth) of the former Act has been modified by a subsequent short Act, the 15 & 16 Vict. c. 24.; and the only statutory additions to the long and elaborate Fines and Recoveries Act with which we are acquainted are, an enactment (probably superfluous) that it shall extend to Berwick (6 & 7 Will. 4. c. 103. s. 6.), a provision that Judges of County Courts may take acknowledgments of married women under the 79th section (19 & 20 Vict. c. 108. s. 73.), the substitution of the Master of the Rolls and the Vice Chancellors for Masters in Chancery for the purposes of the same section by the effect of the 15 & 16 Vict. c. 80. s. 36., and the short Act 17 & 18 Vict. c. 75., making an alteration in the 81st section.

It appears to us that the inconveniences which must always accompany any change, even in the language and form of the law, would exceed any advantages which might result from the incorporation of such slight alterations in cases of this kind; and we therefore consider that nothing should be done with Statutes of the class now under consideration beyond reprinting them in their most suitable places, in any classified edition of the Statutes, or at most re-enacting them in a declaratory way, if such a course is thought advisable.

Omitting, for the reasons above stated, the three classes of Statutes to which we have referred, there still remains a large body of Statutes to which the process of consolidation, as that term is ordinarily understood, may be applied with advantage, and without more difficulty than must accompany any work which requires skill, accuracy, and experience—such as many of the groups of Statutes relating to mercantile law, and generally those branches of the law which are wholly or chiefly based on statutory enactments.

It appears, then, that when the whole existing general Statute Law has been ascertained and arranged by means of the classification and register already mentioned, every enactment will fall under one of four classes (namely):—

1. Historical Statutes.
2. Enactments which require to be re-written.
3. Statutes standing alone, and not requiring consolidation.
4. Statutes requiring consolidation.

Supposing such an arrangement, with re-enactments, re-writings, and consolidation (where required) to have been effected, a complete body of the existing Statute Law, forming the permanent rule of civil conduct, would have been produced, so far as relates to the future; but, in addition to these, it must be borne in mind that there will be a large class of Statutes, which, though not relating to future transactions, must long continue to be referred to, and, in a qualified sense, to be in force, with respect to questions of title, and for many incidental purposes. The Statute of Frauds, for instance, notwithstanding the Wills Act of 1837, must still be the rule for wills made before 1838, and the present Wills Act, as modified by Lord St. Leonard's Act of 1852, must in like manner remain the rule for wills made between 1838 and the passing of any new law on the subject; and it would therefore be necessary under any circumstances, if an edition of the Statutes adapted to the wants of the public is to be produced, to add, in a supplement or otherwise, the laws of this description.

The foregoing observations have been framed with more particular reference to the class of Statutes which affect Real Property, which afford, perhaps, the most salient examples of the various difficulties which surround the work of Consolidation; there are many branches of the law, especially Mercantile law, in which few or none of them occur.

We are well aware of the great difficulties which surround the task confided to us,—difficulties which no one can appreciate who has not had personal experience of them;* but we trust that we may at least claim the credit of having actually commenced and even made an important progress in a work which others have only recommended.

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* We add in the Appendix an Extract from the Report made in 1835 by the Commissioners appointed to inquire into the Consolidation of the Statute Law, giving a short history of the different attempts hitherto made.

CRANWORTH, C. (L.S.)
STANLEY. (L.S.)
LYNDHURST. (L.S.)
BROUGHAM. (L.S.)
WROTTESLEY. (L.S.)
WENSLEYDALE. (L.S.)
J. MONCREIFF. (L.S.)
S. H. WALPOLE. (L.S.)
M. T. BAINES. (L.S.)
WILLIAM PAGE WOOD. (L.S.)
RICHARD BETHELL. (L.S.)
WILLIAM KEOGH. (L.S.)
J. D. FITZGERALD. (L.S.)
JAMES CRAUFURD. (L.S.)
E. F. MAITLAND. (L.S.)
FITZROY KELLY. (L.S.)
CHAS. S. GREAVES. (L.S.)
WALTER COULSON. (L.S.)
H. BELLENDEN KER. (L.S.)

June 1857.

APPENDIX

TO THE

THIRD REPORT

FROM

HER MAJESTY'S COMMISSIONERS

FOR

CONSOLIDATING THE STATUTE LAW.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1857.

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APPENDIX.

Appendix No. 1.

Explanatory Report in reference to the Sessional Registers of Public General Acts prepared under the direction of the Commission.

TO HER MAJESTY'S COMMISSIONERS FOR CONSOLIDATING THE STATUTE LAW.

We now have the honour to submit to the Commission Sessional Registers of all the Public General Acts of the present reign.

The Second Report of the Commission, after showing the evils of the absence of all classification of the Public General Statutes, and the manner in which those evils have arisen, proposes a plan for the division of the Public General Statutes of each session, as they are passed, into leading classes; and as a preliminary measure, the corresponding classification or grouping of the public bills. The Report goes on to suggest for illustration eleven classes, into which the Statutes of a session might be divided.

This is the plan of classification which we have applied to the already existing Public General Acts of the present reign, subject, however, to some modification, which we have found it desirable to adopt.

The Classes now stand thus:—

I. Armed Forces.	X. Local and Special, subdivided into—
II. Revenue.	X. A. Crown Lands.
III. Financial.	X. B. England.
IV. United Kingdom.	X. C. Scotland.
V. Great Britain.	X. D. Ireland.
VI. England and Ireland.	X. E. Miscellaneous.
VII. England.	XI. Colonies.
VIII. Scotland.	XII. East Indies.
IX. Ireland.	XIII. Slave Trade.

Class I.—*Armed Forces.*

In this Class are placed all Acts exclusively or mainly relating to the Armed Forces of the Crown, including Acts relating to their pay, and to the Government Departments whose business is solely or chiefly in connection with these forces.

Class II.—*Revenue.*

In this Class are placed all Acts exclusively or mainly relating to Taxation, including Acts relating to the Government Departments solely or chiefly occupied in the management and collection of taxes, and Acts regulating trades and manufactures, in connection with which duties of excise or other taxes are imposed.

Class III.—*Financial.*

In this Class are placed all Acts authorizing the raising of money upon the public credit, the appropriation of public money for public purposes, or grants or loans of public money, and not containing any provisions but such as concern or are incident to these objects.

Acts which are not of a nature to come within any of the three foregoing Classes are classed as follows:—

Class IV.—*United Kingdom.*

In this Class are placed all Acts relating to the United Kingdom generally, or to all Her Majesty's Dominions or subjects, or to the Queen in Her political capacity, or to Parliament, its constitution or proceedings.

Class V.—*Great Britain.*

In this Class are placed all Acts relating to Great Britain, but not to Ireland.

Class VI.—*England and Ireland.*

In this Class are placed all Acts relating to England and Ireland, but not to Scotland.

Class VII.—*England.*

In this Class are placed all Acts relating to England, but not to Scotland or Ireland.

Class VIII.—*Scotland.*

In this Class are placed all Acts relating to Scotland, but not to England or Ireland.

Class IX.—*Ireland.*

In this Class are placed all Acts relating to Ireland, but not to England or Scotland.

Class X.—*Local and Special.*

In this Class are placed all Acts which relate to parts only of England, Scotland, or Ireland, and which, though comprised among the Public General Acts, are yet similar in their nature to those comprised in the series of Acts distinguished as Local and Personal, and all those special Acts the object of which is to give a Parliamentary sanction to the Orders or Schemes of an Administrative Department, or Commission, but which, as far as respects their limited operation, may be assimilated to Local and Personal or to Private Acts.

The Second Report of the Commission contemplates these Local and Special Acts forming one Class, but finding them very numerous, we have thought it desirable to subdivide them into Classes analogous to the Classes of those Acts which are not of a local or special nature.

Class X. A. comprises such of these Local and Special Acts as relate to the Crown lands, palaces, &c., the Duchies of Cornwall and Lancaster, and lands vested in the Crown or in public officers or departments for public purposes.

Classes X. B., X. C., X. D., respectively, comprise such of these Local and Special Acts as relate to parts of, or to institutions or bodies in, England, Scotland, and Ireland respectively, and Class X. E. comprises such of these Local and Special Acts as relate to parts of, or to institutions or bodies in, the Colonies or Foreign Possessions of the Crown, and such other of these Local and Special Acts as cannot be conveniently placed in any of the four other Classes into which Class X. is subdivided.

Class XI.—*Colonies.*

In this Class are placed all Acts relating to the Colonies or Foreign Possessions of the Crown exclusively, or to some of them.

Class XII.—*East Indies.*

In this Class are placed all Acts relating to the East Indies or the East India Company exclusively.

Class XIII.—*Slave Trade.*

In this Class are placed all Acts concerning the Suppression of the Slave Trade, under Conventions with Foreign Powers or otherwise.

No distinct classification is made of Acts which relate to the United Kingdom, or to any part of it, in respect of their extending also to the Colonies or Foreign Possessions of the Crown, or to the Channel Islands or Isle of Man; but we have usually noted in the Register the cases where this occurs.

The Class to which any Act now in force belongs, according to the foregoing principles of classification, is shewn in column 3 of the Register.

The existing Acts have been of course framed without regard to this system of classification, and it will be useful to state the considerations which have guided us in its application to certain descriptions of Acts, with respect to which difficulties present themselves.

Many Acts which mainly relate to one part of the United Kingdom affect to a very limited extent other parts.

1 & 2 Vict. c. 110. 12 & 13 Vict. c. 106. 11 & 12 Vict. cc. 42. & 43.

For instance, the Acts concerning the Law of Insolvency and Bankruptcy in England vest in assignees the insolvent's or bankrupt's real and personal property everywhere in the United Kingdom. Again, the Acts regulating the proceedings before justices of the peace out of sessions in England with respect to indictable offences and summary convictions, commonly known as Jervis's Acts, contain provisions under which English warrants may be backed in Ireland, and vice versâ, and English or Irish warrants may be backed in Scotland, and vice versâ.

Inasmuch, however, as the main provisions of all these Acts concern England only, they are placed in Class VII.

But it will be desirable that in any classified edition or arrangement of the Statutes, such portion of these Acts as affect the parts of the United Kingdom not embraced in the Class in which the Acts are placed should be set out or referred to in connection with the

Classes embracing those parts. The memoranda in column 9 of the Register will afford the necessary information for this purpose.

A few instances occur in which an Act seems properly to belong to each of two Classes. It might be desirable that such an Act should be given in duplicate in any such classified edition. These cases are indicated in the Register.

Where we have been doubtful whether an Act ought to be considered as a Local or Special Act, or as an Act affecting one of the three divisions of the United Kingdom, it has appeared to us safer to treat it as an Act of the latter description. For instance, an Act concerning the practice in the County Palatine of Lancaster, with respect to the trial of issues from the Superior Courts at Westminster, is placed in Class VII. So also is an Act concerning the administration of justice in the Cinque Ports, because it affects the execution of process, &c. issuing from the Superior Courts.

18 & 19 Vict. c. 45.

18 & 19 Vict. c. 48.

Where an Act has been extended by a subsequent Act to a part of the United Kingdom to which it did not originally relate, or has been repealed as to a part of the United Kingdom to which it did originally relate, we have classed it according to its present territorial extent of operation.

For instance, an Act for facilitating the sale of Church patronage belonging to Municipal Corporations, which related to England only, is extended in part to Ireland by a subsequent Act, and is therefore placed in Class VI.

1 & 2 Vict. c. 31.

3 & 4 Vict. c. 108.

And on the other hand, the Nuisances Removal and Diseases Prevention Acts originally related to the United Kingdom, but having been repealed as to England and Scotland, they are placed in Class IX.

11 & 12 Vict. c. 123.; 12 & 13 Vict. c. 111.

The provisions of the Mutiny and Marine Mutiny Acts are not confined absolutely to the Armed Forces; some of them affect civilians,—as the provisions concerning billeting, supply of carriages for transit, and enlistment of apprentices. But as these provisions affect civilians only in connection with the Armed Forces, and do not appear to be such as it is necessary to bring to the notice of those whom they concern until they are put into action, they are disregarded for the purposes of classification.

The Register does not shew (except in a few peculiar cases) the Classes of such Acts as have been wholly repealed, or are expired, or the operation of which is spent.

Where there has been a doubt as to the right classification it has been noted in the Register.

Where an Act has been indexed by the Queen's printers as having a wider or a narrower territorial extent of operation than that indicated by the Class in which we have placed it, we have noted this diversity in the Register.

The Register next shews, in column 5, every previous Act to which the Act registered contains any express reference, and the mode in which the previous Act is operated upon, by way of repeal or otherwise, by the Act registered; and then, in column 6, the mode in which the Act registered is itself operated upon, by way of repeal or otherwise, by every subsequent Act in which it is expressly referred to.

In effect, the entries in column 6 opposite to the several Acts registered shew, as well their present condition, whether repealed wholly or in part, amended, continued, or otherwise affected, so far as this depends upon subsequent Acts containing any express reference to them,—as also the cases in which the provisions of the Acts registered have been incorrated, applied, or referred to by subsequent Acts in such manner as to render them virtually parts of the subsequent Acts.

The entries in columns 5 and 6 further shew the cases in which Acts are merely recited in or referred to by subsequent Acts without apparently being substantially operated upon by them by way of repeal or incorporation, or otherwise.

It will be obvious, from the foregoing explanation, that the materials for the entries in column 6 are furnished by the entries previously made in column 5 opposite to the several subsequent Acts.

In making the entries in column 5, it has been our object, while entering every reference to a previous Act, which when transferred to column 6, opposite to the previous Act, might convey any information as to the condition of the previous Act, at the same time to avoid incumbering the Register with such entries as clearly appeared to be valueless for that purpose.

We have, therefore, entered every previous Act expressly referred to for any purpose whatever by the Act registered, except where we were satisfied the entry would be useless. We are at the same time well aware that many of the entries appearing in the Register

will probably upon closer examination of the Acts be found of little or no practical value. We have been desirous to risk rather the insertion of useless entries than the omission of any which might eventually be of the least use.

A few instances will suffice to explain our practice in respect of the omission of entries:—

Where a temporary Act has been continued from time to time by various Acts, as in the
3 & 4 Vict. c. 89. case of the Act passed in 1840 "for exempting for one year stock in trade from poor rates," which Act had been continued annually up to 1856, but was in that year continued for three years further, we have deemed it sufficient to enter in column 6 against the
19 & 20 Vict. c. 42. original Act the last continuing Act only; and, of course, column 5 corresponds.

In the case of the Mutiny and Marine Mutiny Acts, we have not made entries with regard to Acts affected or referred to by them, except in connection with the Mutiny and Marine Mutiny Acts of the last Session.

In the case of those financial Acts which are of frequent recurrence, and are temporary or transitory, as Exchequer Bill Acts, we have considered it futile to enter any notice of references in them to the Acts regulating the mode of issuing Exchequer Bills, or to an Act of William & Mary, concerning the Bank of England, to which reference is always made in these Acts. And in the case of Funding or Loan Acts, which Acts provide that the new annuities created by them shall be added to the joint stock of Consols created by the Acts therein referred to, it has seemed to us quite unnecessary to make any entry indicative of these references.

We have also thought that no purpose could be served by noticing in the Register the very many cases in which the Lands, Railways, and other Clauses Consolidation Acts have, in accordance with the very object of their enactment, been incorporated with other Acts.

We have deemed it unnecessary to make entries of the incorporation (with or without
11 & 12 Vict. c. 63. qualification) of the Public Health Act in the several Acts confirming Provisional Orders made by the General Board of Health.

Where, as is very often the case, various parts of the Act under consideration operate upon a previous Act in different ways, we have as a general rule made an entry in column 5 of one kind of operation only, selecting for that purpose the most important kind, a partial repeal, for instance, in preference to any other kind of operation; but at the same time we have indicated that the previous Act is operated upon in a variety of ways, by adding "&c." to the entry, except where the operation entered is a partial repeal, in which case a notice of any less important operation seems unnecessary.

The repeal of an Act is frequently accompanied by savings for penalties already incurred, and pending proceedings taken under the Act repealed, and other savings of a like nature; and, down to the beginning of the Session of 1851,* there was also usually inserted in the repealing Act a proviso against the revival of Acts repealed by the Act under repeal. We have thought it better not to attempt to indicate in the Register the existence of such savings and provisoes, and to explain here generally that a statement in the Register of a total repeal must be taken subject to this qualification.

The entries in column 4 show the particular sections of the Act registered which operate upon or refer to the previous Act entered in column 5.

In some instances no section is specified in column 4. This usually occurs with reference to entries of recitals and amendments. The absence of any entry of a section is to be understood to indicate, in the case of a recital, that the Act entered in column 5 is recited in the preamble; in the case of an amendment, that the Act entered is amended by the Act registered, generally.

Where the Act under consideration repeals in part a previous Act by different sections, we have specified in column 4 all those sections, but with respect to operations other than partial repeals, we have usually considered it sufficient to specify one section which effects the operation entered, and to add "&c." in column 4.

Where Local and Personal or Private Acts, or Acts of the Scotch or Irish Parliaments, are referred to for any purpose in the Acts registered, entries are made in columns 4 and 5 of the Register, as in other cases; Acts of the Scotch and Irish Parliaments being distinguished respectively by the letters (S) and (I); Local and Personal Acts being distinguished by Roman numerals in the usual manner, and Private Acts having the words "Private printed," or "Private" simply, as the case required, added. Our work has not required or enabled us to make use of these entries.

Column 7 shews which of the Acts registered are expired by effluxion of the time limited for their duration.

It also shows those Acts (not being properly expired) the operation of which is, according to the expression adopted in the Second Report of the Commission, spent. This expression is to be understood to apply to,—

All Acts (other than expired Acts) the operation of which is spent as soon as they are passed, or at some specified time, or upon the doing of some act or acts authorized

* This was rendered unnecessary by 13 & 14 Vict. c. 21.

or required, with the exception to be presently noticed. This description we consider embraces,—

The annual Supply, Appropriation, and Exchequer Bill Acts.

Acts which merely repeal other Acts.

Acts simply confirmatory of some act or acts done, for instance, an Act "to confirm "certain proceedings which may have been had after the passing of the Act, intituled "'An Act to define the jurisdiction of Justices in General and Quarter Sessions of the "'Peace,'" and an Act "for establishing the validity of certain proceedings in Her "Majesty's Court of Vice Admiralty in Mauritius." 5 & 6 Vict. c. 43. 17 & 18 Vict. c. 37.

Acts of indemnity; as for example, the annual Indemnity Act, and Acts indemnifying witnesses giving evidence in relation to bribery at certain Parliamentary elections. 5 & 6 Vict. cc. 31. 52.

We have considered that convenience required that Acts confirmatory of charters granted (*quasi*) under the Municipal Corporations Act, 5 & 6 Will. 4. c. 76.; Acts confirming past marriages; Acts confirming Provisional Orders under the General Inclosure Act, the Public Health Act, and the Turnpike Trusts Arrangement Act, and Schemes under the Charitable Trusts Act; and Acts of a like nature, should not be treated as spent, although commonly not containing provisions which can be regarded as in active operation.

In column 9 of the Register we have noticed, where we have thought it might be usefully done, cases in which Acts referred to in general terms, and not by any specific description which would enable us to enter them in column 5, are affected by the Act registered.

For instance, an Act concerning the Queen's Prison provides (by s. 6.) that so far as relates to the Queen's Prison, the power given by the provisions of Acts theretofore passed (without mentioning what particular Acts) to reduce or lessen any penalty or term of imprisonment imposed upon persons convicted of bringing spirituous liquor into a prison shall no longer exist: and this provision is noticed in column 9 of the Register opposite to the Act containing it. 11 & 12 Vict. c. 7.

The same column contains other remarks, some of which are intended to be permanently retained in the Register, while others have been inserted merely for the temporary purpose of calling the attention of the Commission to doubtful points, chiefly with reference to classification, which must be settled before the Register can be considered perfect.

The necessary information for the construction of the Register has been obtained by an attentive examination of each Act, beginning with the most recent session.

Having now explained the frame of the Register, we proceed to state the objects which we have had in view in its formation.

The first object has been to distinguish the Class to which each Act belongs.

In this respect the Register will furnish the means for the issue either of all the existing Acts in a classified form or of such Classes of them as are of general public interest, disencumbered of the mass of Acts of other Classes with which they are now confused.

The next object has been to shew what Acts are no longer in force, and might therefore be omitted from any classified or new edition of the existing Acts.

The Register will answer the purposes above mentioned, independently of consolidation.

The next object has been, for the purposes of consolidation, to afford means of information as to the extent and manner in which any Act to which the process of consolidation is to be applied has been affected by subsequent legislation.

Amendments in Acts are sometimes made in such a manner that there is considerable risk of their not being discovered, except in the course of such a systematic examination of all the Acts, without distinction of subject, as has been requisite for the construction of the Register.

And except through this systematic examination it is scarcely possible that the necessary information can be obtained respecting the cases in which the provisions of an Act have been so incorporated by or otherwise virtually made part of subsequent Acts, that such Act cannot safely and usefully be dealt with for the purposes of consolidation, without regard being had to this circumstance.

To give an instance of a case where the amendment of an Act is so made as to be likely to escape observation:—the Register shows that the Act, known as the Trustee Act, 1850, is amended by 18 & 19 Vict. c. 91. Now the latter is an Act "to facilitate the erection and maintenance of Colonial Lighthouses, and otherwise to amend the Merchant Shipping Act, 1854;" and a search directed merely to the discovery of provisions affecting the Trustee Act would very probably not extend to an Act so intituled; yet (by s. 10.) this Act provides that shares in ships registered under the Merchant Shipping Act, 1854, shall be deemed to be included in the word "stock," as defined by the Trustee Act, 1850, and makes the provisions of the last-mentioned Act applicable to such shares accordingly. 13 & 14 Vict. c. 60.

The following is an instance of the incorporation of one Act in another, which without the aid of the Register, could scarcely fail to be overlooked by any one having to deal with the Act incorporated. The Merchant Shipping Act, 1854, contains provisions concerning the recovery in Scotland of penalties under that Act; and the Joint Stock Companies Act of 1856 provides for offences under that Act, punishable by penalties, being prosecuted in Scotland in the manner directed by the Merchant Shipping Act, 1854. Any person dealing with the Merchant Shipping Act for the purposes of consolidation could hardly be expected to be cognizant of this circumstance.

17 & 18 Vict. c. 104.
19 & 20 Vict. c. 47. s. 56.

The Register brings conspicuously into notice some instances in which the provisions of Acts that have been repealed have been inadvertently treated as in force, and incorporated in Acts passed subsequently to the repeal.

Independently of the objects directly aimed at in the construction of the Register, it must be obvious that it will be of very considerable utility to practitioners of the law, and to all other persons who may have occasion to refer to the Statutes.

We have procured separate prints of all the Acts of the present reign, and have placed by themselves all the Acts of each Session which are wholly repealed, expired, or spent, and arranged the remainder in their respective Classes according to the Register.

We have ascertained the number of the pages of all the repealed, expired, or spent Acts, and of all the Acts comprised in each Class; and we find that of the whole of the Public General Acts passed during the present reign more than one-fourth in bulk consists of Acts not now in force, and that the Acts which are of general public concern in England (Classes IV., V., VI., VII.) amount to little more than one-third in bulk of the residue.

We should perhaps observe that some of the repealed Acts cannot be omitted from any classified or new edition of the Acts now in force, in consequence of their forming, as it were parts of other Acts which are in force. This circumstance will not, however, in any material degree affect the result above stated.

It is obvious that the proportional bulk of the repealed Acts will be found to be greatly increased as the work is carried back.

ARTHUR JOHN WOOD.
G. B. LENNARD
F. S. REILLY.
ALFRED WILLS.

June, 1857.

SPECIMEN

OF THE

REGISTER OF PUBLIC GENERAL ACTS.

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7 WILL. IV. & 1 VICT.

1.	2.	3.	4.	5.
Chapter.	Subject Matter.	Class.	Section affecting or referring to Acts in Column 5.	Acts affected or referred to by Acts here registered.
1	Suspension of the Acts for the Registration of Births, Deaths, and Marriages, and for Marriages.	(*a*) VII.	1	6 & 7 Will. 4. cc. 85, 86. suspended.
2	Grand Jury Presentments (Ireland) -	IX.	5, 17 11	6 & 7 Will. 4. c. 116. repealed in part. 1 & 2 Will. 4. c. 33. referred to. 6 Geo. 4. c. 101. applied.
3	Packet Service, Transfer of Mail Contracts to the Admiralty.	- -	- -	- - - - -
4	Charities Inquiries Commission Continuance.	- -	- -	5 & 6 Will 4. c. 71. continued -
5	Punishment of Leasing-making, Sedition, and Blasphemy (Scotland).	VIII.	- -	11 Geo. 4. & 1 Will. 4. c. 73. recited. 6 Geo. 4. c. 47. repealed in part.
6	Supply - - - - -	- -	- -	- - - - -
7	Mutiny - - - - -	- -	- -	- - - - -
8	Marine Mutiny - - - -	- -	- -	- - - - -
9	The Royal Mint - - -	(*b*) III.	2	39 Geo. 3. c. 94 } repealed in 1 & 2 Will. 4. c. 10. } part.
10	Irish and Scotch Paupers Removal -	- -	- -	3 & 4 Will. 4. c. 40. continued and amended.
11	Supply - - - - -	- -	- -	- - - - -
12	Indemnity (*c*) - - - -	IV.	- -	- - - - -
13	Millbank Penitentiary - - -	- -	2, 4 (*d*)	56 Geo. 3. c. 63. repealed in part -
14	Trial by Jury (Scotland) - - -	VIII.	- -	55 Geo. 3. c. 42. } amended. 59 Geo. 3. c. 35. }

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
Referred to by 7 Will. 4. & 1 Vict. c. 22. s. 26.	Spent -	- -	(*a*) Although this Act has ceased to be in operation it appears convenient to class it with the Acts affected by it.	1
Explained by 2 & 3 Vict. c. 50. s. 12. Applied by 9 & 10 Vict. c. 2. s. 3. Repealed in part by 9 & 10 Vict. c. 37. s. 1. Applied by 11 & 12 Vict. c. 1. ss. 2. 17.	- - -	- -	- - - - -	2
- - - - -	Spent -	- -	- - - - -	3
- - - - -	Expired -	- -	- - - - -	4
- - - - -	Spent -	- -	- - - - -	5
- - - - -	Spent -	- -	- - - - -	6
- - - - -	Expired -	- -	- - - - -	7
- - - - -	Expired -	- -	- - - - -	8
- - - - -	- - -	- -	(*b*) Qu. Class IV. - - -	9
Continued by 7 & 8 Vict. c. 42. Repealed in part by 8 & 9 Vict. c. 117. s. 1.	Expired -	- -	- - - - -	10
- - - - -	Spent -	- -	- - - - -	11
Repealed in part as to England by 6 & 7 Vict. c. 73. s. 1., and Schedule I.	Spent, except as to part of s. 6. and ss. 7, 8, and 9.	- -	(*c*) This Act requires consideration, as well as the other Indemnity Acts to 6 & 7 Vict. inclusive. Compare part of s. 6. with s. 4. of 7 & 8 Vict. c. 86., and ss. 7. and 8. with ss. 1., 28., 29. of 6 & 7 Vict. c. 73. Sect. 9. of the Act here registered, and also ss. 7. and 8., have been omitted in all Indemnity Acts passed after the Session 6 & 7 Vict.	12
Extended by 2 & 3 Vict. c. 56. s. 18. Repealed by 6 & 7 Vict. c. 26. s. 1.	- - -	- -	(*d*) Sect. 4. repeals in part the several Acts relating to Millbank Penitentiary without specifying them.	13
- - - - -	- - -	- -	- - - -	14

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or referring to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
15	Crown Manor of Newark, Discharge from Costs of rebuilding &c. Trent and Markham Bridges.	X. A.	- -	- - - - -
16	Exchequer Bills - - - -	- -	- -	- - - - -
17	Transfer to the Consolidated Fund of certain Monies, and cancellation of certain Stock.	III.	1	57 Geo. 3. cc. 34. 124. 3 Geo. 4. c. 112. 1 & 2 Will. 4. c. 24. 4 & 5 Will. 4. c. 72. 2 & 3 Will. 4. c. 125. (*a*) 4 Geo. 4. c. 71. 56 Geo. 3. c. 97. } referred to.
			3, 4, 5	38 Geo. 3. c. 60. 39 Geo. 3. c. 6. 53 Geo. 3. c. 123. } amended, &c.
18	Turnpike Acts Continuance - - -	- -	- -	- - - - -
19	Quarter Sessions, Power to form a Second Court.	(*b*) VI.	4	59 Geo. 3. c. 28. amended - -
20	Kent and Sussex Royal Military Canal -	(*c*) X. A.	1	47 Geo. 3. sess. 2. c. 70. affected.
			2	1 & 2 Geo. 4. c. 69. 2 & 3 Will. 4. c. 25. } incorporated.
21	Public Works (Ireland) - - -	IX.	- -	1 & 2 Will. 4. c. 33. 6 & 7 Will. 4. c. 108. } amended.
			3	6 & 7 Will. 4. c. 116. referred to.
			10	11 Geo. 4. & 1 Will. 4. c. 54. affected.
22	Marriages Act, and Registration of Births, Deaths, and Marriages Act, Amendment.	VII.	- -	6 & 7 Will. 4. cc. 85, 86. amended.
			9	4 & 5 Will. 4. c. 76. referred to.
			26	7 Will. 4. & 1 Vict. c. 1. referred to.
23	Punishment of the Pillory, Abolition -	(*d*) IV.	- -	- - - - -
24	Shire Halls, &c. - - - -	VII.	- -	3 & 4 Will. c. 71. recited. 7 Geo. 4. c. 63. extended.

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
- - - - -	- - -	- -	- - - - -	15
- - - - -	Spent -	- -	- - - - -	16
- - - - -	Spent in part	- -	(*a*) It is presumed this is the Act meant. It is recited as "an "Act passed in the First and "Second Years of the Reign "of His present Majesty, for "the Relief of Persons who sus- "tained Losses in the West "Indies." There is no Act properly answering this description.	17
- - - - - -	Expired -	- -	- - - - -	18
- - - - - -	- - -	- -	(*b*) Indexed by the Queen's Printers as relating to England only. There is nothing so to restrict it.	19
- - - - - -	- - -	- -	(*c*) Qu. Class I. - - -	20
Incorporated by 2 & 3 Vict. c. 50. s. 2. Amended by 6 & 7 Vict. c. 44. s. 1. Applied by 8 & 9 Vict. c. 66. s. 18. Incorporated, &c. by 9 & 10 Vict. c. 1. s. 2., &c. Incorporated by 9 & 10 Vict. c. 85. s. 10. and c. 109. s. 2. Recited by 9 & 10 Vict. cc. 86. 108. Referred to by 11 & 12 Vict. c. 51. s. 1. Affected by 13 & 14 Vict. c. 14. Incorporated by { 14 & 15 Vict. c. 51. s. 10. 19 & 20 Vict. c. 18. s. 11.	- - -	- -	- - - - -	21
Amended by { 3 & 4 Vict. c. 72. 19 & 20 Vict. c. 119.	- - -	- -	- - - - - -	22
- - - - - -	- - -	- -	(*d*) Indexed by the Queen's Printers as relating to England only. The Act is not so restricted in terms, but it may be so in fact, *i. e.* if the punishment of the pillory existed in England only.	23
Amended by 10 & 11 Vict. c. 28. -	- - -	- -	- - - - - -	24

1.	2.	3.	4.	5.
Chapter.	Subject Matter.	Class.	Section affecting or referring to Acts in Column 5.	Acts affected or referred to by Acts here registered.
25	Dublin Police	X. D.	1, &c.	6 & 7 Will. c. 29. } amended. 48 Geo. 3. c. 140. }
			1	6 & 7 Will. 4. c. 13. explained.
			5	5 Geo. 4. c. cxviii. applied.
			18	Geo. 4. c. 28. referred to.
			24	57 Geo. 3. sess. 2. c. cix. affected.
			27	& 7 Will. 4. c. 116. applied.
26	Law of Wills Amendment	VI.		12 Car 2. c. 24. } affected. 14 & 15 Car. 2. c. 19. (I.) }
			2	The following Acts repealed wholly or in part: (*a*)
				32 Hen. 8. c. 1.
				34 & 35 Hen. 8. c. 5.
				10 Car. 1. sess. 2. c. 2. (I.)
				29 Car. 2. c. 3. }
				7 Will. 3. c. 12. (I.) }
				4 & 5 Ann. c. 16. } in part.
				6 Ann. c. 10. (I.) }
				14 Geo. 2. c. 20. }
				25 Geo. 2. c. 6. (*b*)
				25 Geo. 2. c. 11. (I.)
				55 Geo. 3. c. 192.
			12	11 Geo. 4. & 1 Will. 4. c. 20. saved.
27	Sugar Duties			
28	Amendment of the Act for the Limitation of Actions and Suits relating to Real Property.	VI.		3 & 4 Will. 4. c. 27. amended
29	Promotion of Foreigners holding Commissions in Her Majesty's Forces, and Enlistment of Foreigners.	I.	1	55 Geo. 3. c. 85. explained
30	Officers of Superior Courts of Common Law	VII.	6	3 Geo. 4. c. 69. recited.
			10	2 & 3 Will. 4. c. 110. saved.
			21	4 & 5 Will. 4. c. 24. applied.
			24	6 Geo. 4. cc. 82. 83. recited.
			26, &c.	11 Geo. 4. & 1 Will. 4. c. 58. applied, &c.
			28	7 Ann. c. 20. } affected. 25 Geo. 2. c. 4. }
31	Military Commissions Continuance notwithstanding the Demise of the Crown.	I.		

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
Applied by 1 & 2 Vict. c. 51. s. 2. Amended by 1 & 2 Vict. c. 63. s. 3. Repealed in part by 2 & 3 Vict. c. 78. s. 2. Incorporated by 5 & 6 Vict. c. 24. s. 1. Referred to by 7 & 8 Vict. c. 106. s. 36. Recited by 11 & 12 Vict. c. 113. Sect. 23. repealed by 16 & 17 Vict. c. 112. s. 1., and Schedule (A.)	- - -	- -	- - - - - -	25
Saved by { 6 & 7 Vict. c. 85. s. 1. 14 & 15 Vict. c. 99. s. 5. Amended by 15 & 16 Vict. c. 24.	- - -	- -	- - - - -	26
- - - - - -	- - -	- -	(*a*) "Except so far as the same Acts or any of them respectively relate to any Wills or Estates *pur autre vie*, to which this Act does not extend."	
- - - - - -	- - -	- -	(*b*) Except so far as relates to the American Colonies.	
- - - - - -	Expired -	- -	- - - - -	27
- - - - - -	- - -	- -	- - - - -	28
- - - - - -	- - -	- -	- - - - -	29
Affected by 17 & 18 Vict. c. 94. s. 1., and Schedule B.	- - -	- -	- - - - -	30
- - - - - -	- - -	- -	- - - - -	31

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or referring to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
32	Post Office Acts Repeal (*a*) - - -	II.	- -	The following Acts repealed wholly or in part: (*b*)
			1, and Sched. A.	1 Will. & Mar. sess. 3. c. 3. (S.)
			1 & 2, and Scheds. A. & B.	9 Ann. c. 10. in part.
			1, and Sched. A.	6 Geo. 1. c. 21. in part.
				4 Geo. 2. c. 33.
				22 Geo. 2. c. 25.
				26 Geo. 2. c. 13. in part.
				4 Geo. 3. c. 24.
			1 & 2, and Scheds. A. & B.	5 Geo. 3. c. 25. (*c*)
				7 Geo. 3. c. 50. (*d*)
			1, and Sched. A.	9 Geo. 3. c. 35. in part.
				22 Geo. 3. c. 70.
				23 Geo. 3. c. 69.
				23 & 24 Geo. 3. c. 17. (I.)
				24 Geo. 3. c. 6.
				24 Geo. 3. sess. 2. c. 8.
			1 & 2, and Scheds. A. & B.	24 Geo. 3. sess. 2. c. 37. in part.
			1, and Sched. A.	25 Geo. 3. c. 57.
				25 Geo. 3. c. 60. in part.
				27 Geo. 3. c. 9.
				28 Geo. 3. c. 13. (I.)
				33 Geo. 3. c. 60.
				34 Geo. 3. cc. 17. 18.
				35 Geo. 3. c. 53.
				36 Geo. 3. c. 7. (I.)
				37 Geo. 3. c. 18. in part.
				38 Geo. 3. c. 47. (I.)
				39 Geo. 3. c. 76.
				40 Geo. 3. c. 8. (I.)
				41 Geo. 3. c. 7.
				42 Geo. 3. cc. 63, 81, 101.
				43 Geo. 3. c. 28.
				43 Geo. 3. cc. 31. 119.; both in part.
				44 Geo. 3. c. 84.
				45 Geo. 3. cc. 11, 21.
				45 Geo. 3. c. 72. in part.
				46 Geo. 3. cc. 61, 73, 83, 92.
				46 Geo. 3. c. 142. in part.
				47 Geo. 3. sess. 2. c. 59.
				48 Geo. 3. cc. 90. 116.
				49 Geo. 3. cc. 35, 45, 108, 123: all in part.
				50 Geo. 3. c. 65. in part.
				50 Geo. 3. cc. 66. 74.

(*Continued p.* 18.)

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
Referred to by { 7 Will. 4. & 1 Vict. c. 33. ss. 1. 11., and cc. 34, 35, 36, s. 1. Repealed in part by 3 & 4 Vict. c. 96. s. 68.	Spent -	- -	(*a*) Sect. 2 repeals all Acts and parts of Acts relating to the Revenue or the Management of the business of the Post Office, or the privilege of sending and receiving letters free of postage or at a reduced rate of postage, or relating to offences against the Post Office, which are punishable specifically by the Post Office Laws, save such Acts and parts of Acts as are mentioned in the Schedule B. (See also the rest of this Section.) (*b*) Sect. 1 provides that "no Act "or part of an Act perpetuated "or continued by any of the "Acts hereby repealed (except "such as are herein expressly "repealed) shall be repealed by "the passing of this Act." (*c*) Except as to postage of letters, &c., within the American and West Indian Colonies, and to any offence within such dominions. (*d*) Except as to offences within the same limits.	32

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or referring to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
32 *continued*				52 Geo. 3. c. 88. 52 Geo. 3. cc. 132. 143; both in part. 53 Geo. 3. cc. 13, 58, 68. 54 Geo. 3. cc. 119. 169. 55 Geo. 3. cc. 103, 145, 153. 56 Geo. 3. c. 98. in part. 57 Geo. 3. cc. 9. 66; both in part. 58 Geo. 3. c. 45. in part. 59 Geo. 3. cc. 108. 111. 1 Geo. 4. c. 89. 3 Geo. 4. c. 105. 3 Geo. 4. c. 126. in part. 4 Geo. 4. cc. 49, 81, 95; all in part. 5 Geo. 4. cc. 10. 20. 6 Geo. 4. cc. 28, 44, 68. (*a*) 7 Geo. 4. c. 16. in part. 7 & 8 Geo. 4. cc. 6. 21. 7 & 8 Geo. 4. c. 58. in part. 9 Geo. 4. c. 42. in part. 10 Geo. 4. c. 26. in part. 1 Will. 4. c. 8. 1 & 2 Will. 4. c. 43. in part. 2 & 3 Will. 4. c. 15. 2 & 3 Will. 4. cc 53. 106; both in part. 4 & 5 Will. 4. c. 44. 5 & 6 Will. 4. c. 25. 6 & 7 Will. 4. cc. 21. 54.
			1 & 2, and Scheds. A. & B.	6 & 7 Will. 4. c. 25. in part.
			2, and Sched. B.	The following Acts saved: 5 Ann. c. 4. s. 1. 1 Geo. 1. c. 78. (*b*) 3 Geo. 1. c. 7. in part. 3 Geo. 2. c. 36. 27 Geo. 3. c. 13. in part. 45 Geo. 3. c. 43. 46 Geo. 3. c. 134. 48 Geo. 3. c. 48. 48 Geo. 3. c. 140. in part. 52 Geo. 3. c. 146. 53 Geo. 3. cc. 89. 146. 54 Geo. 3. c. 63. 55 Geo. 3. c. xci. 55 Geo. 3. c. 120. in part. 5 Geo. 4. cc. 5. 85. 1 Will. 4. c. 27. 1 & 2 Will. 4. c. 33. 2 & 3 Will. 4. cc. 4, 86. 4 & 5 Will. 4. c. 7. 6 & 7 Will. 4. c. 116. in part.
			3	7 Will. 4. & 1 Vict. c. 36. applied.
33	Post Office Management - - -	II.	1, 11 21	7 Will. 4. & 1 Vict. c. 32. referred to. 7 Will. 4. & 1 Vict. c. 36. applied.

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
- - - - - -	- -	- -	- - - - -	32
- - - - - -	- - -	- -	(*a*) c. 68 is repealed except as to compensation to officers of the Post Office having the privilege of franking.	
- - - - - -	- - -	- -	(*b*) None of the collections of the Statutes contains this Act, but a description of it by the year, chapter, and title, agreeing with that in the Act here registered, is found in "A Kalendar of all "the Public and Private Acts "lying in the Parliament Office, "Westminster, since 12th of "Hen. 7th., 1497," a MS. in Lincoln's Inn Library. See as to the subject matter of the Act 19 & 20 Vict. cc. 43. 59.	
Repealed in part by 3 & 4 Vict. c. 96. s. 68. Referred to by 7 & 8 Vict. c. 49. s. 1., &c. Affected by 12 & 13 Vict. c. 66.	- - -	- - -	- - - - -	33

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or referring to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
34	Postage Duties Regulation - -	- -	1 42	7 Will. 4. & 1 Vict. c. 32. referred to. 7 Will. 4. & 1 Vict. c. 36. applied.
35	Postage Duties Exemptions - -	- -	1 19 Sched. D.	7 Will. 4. & 1 Vict. c. 32. referred to. 7 Will. 4. & 1 Vict. c. 36. applied. 57 Geo. 3. c. 34. 2 & 3 Will. 4. c. 125. 5 & 6 Will. 4. c. 51. } referred to.
36	Offences against the Post Office; Post Office Laws Administration, and Interpretation. (*a*)	IV.	1 6	7 Will. 4. & 1 Vict. c. 32. referred to. 7 Will. 4. & 1 Vict. c. 34. referred to.
37	Office of Justice of the Peace (Metropolis), Continuance.	- -	- -	3 & 4 Will. 4. c. 19. continued -
38	Exchequer Bills - - - -	- -	- -	- - - - -
39	Interpretation of certain Words in Acts relating to Scotland.	VIII.	- -	- - - - -
40	Payment of Creditors (Scotland), Continuance.	VIII.	- -	54 Geo. 3. c. 137. continued.
41	Recovery of Small Debts (Scotland) -	VIII.	1 22 23, &c.	10 Geo. 4. c. 55. repealed. 3 Geo. 4. c. 33. 9 Geo. 4. c. 39. } altered. 20 Geo. 2. c. 43. affected, &c.
42	New South Wales and Van Diemen's Land Government Continuance.	- -	- -	- - - - -
43	Recovery of Small Debts by Civil Bill (Ireland).	- -	1 3	7 Geo. 4. c. 36. amended. 6 & 7 Will. 4. c. 75. repealed in part.
44	Costs of Prosecutions for Concealment of Births.	(*b*) VII.	- -	9 Geo. 4. c. 31. recited - -

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
Referred to by 7 Will. 4. & 1 Vict. c. 36. s. 6. Repealed in part by 1 & 2 Vict. c. 97. s. 1. Repealed by 3 & 4 Vict. c. 96. s. 68.	- - -	- -	- - - - -	34
Applied by 2 & 3 Vict. c. 17. s. 10. Affected by 2 & 3 Vict. c. 52. s. 3. Repealed by 3 & 4 Vict. c. 96. s. 68.	- - -	- -	- - - - -	35
Applied by { 7 Will. 4. & 1 Vict. c. 32. s. 3., c. 33. s. 21., c. 34. s. 42., and c. 35. s. 19.; 1 & 2 Vict. c. 97. s. 6., and c. 98. s. 19.; 2 & 3 Vict. c. 17. s. 10. Extended, &c. by { 2 & 3 Vict. c. 52. ss. 10. 12.; 3 & 4 Vict. c. 96. ss. 37. 71.	- - -	- -	(a) This Act extends to the Islands of Man, Jersey, Guernsey, Sark, and Alderney, and all Her Majesty's Colonies and Dominions. s. 48.	36
Repealed by 2 & 3 Vict. c. 71. s. 54.	- - -	- -	- - - - -	37
- - - - - -	Spent -	- -	- - - - -	38
- - - - - -	- - -	- -	- - - - -	39
- - - - - -	Expired -	- -	- - - - -	40
Applied by 1 & 2 Vict. c. 119. s. 10. Referred to by 8 & 9 Vict. c. 15. s. 5. Amended by 8 & 9 Vict. c. 39. s. 1. Applied, &c. by 8 & 9 Vict. c. 41. ss. 9. 45. Saved by 16 & 17 Vict. c. 27. s. 5. Repealed by 16 & 17 Vict. c. 80. s. 51., so far as necessary to give effect to the provisions of that Act. Applied by 17 & 18 Vict. c. 74. s. 5.	- - -	- -	- - - - -	41
- - - - -	Expired -	- -	- - - - -	42
Explained by 5 & 6 Vict. c. 33. s. 1. Amended by 6 & 7 Vict. c. 81. s. 7. Referred to by 8 & 9 Vict. c. 15. s. 5. Repealed by 14 & 15 Vict. c. 57. s. 1., and Schedule A.	- - -	- -	- - - - -	43
- - - - -	- - -	- -	(b) This Act, although general in its terms, appears to be intended to be confined to England, the Act recited being so confined.	44

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or referring to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
45	Notices and Proclamations on Sundays (*a*)	VII.	1	58 Geo. 3. c. 69. repealed in part. 31 Eliz. c. 3. altered
46	Rolls Estate; Payment of Salary of the Master of the Rolls, &c.	VII.	- -	12 Car. 2. c. 36. 6 & 7 Will. 4. c. 49. 50 Geo. 3. c. clxiv. 1 Geo. 4. c. lix. } affected.
			1	17 Geo. 3. c. 59. 1 Geo. 4. c. 107. } repealed.
			2	10 Geo. 4. c. 50. 2 & 3 Will. 4. c. 1. } applied.
			8	23 Geo. 2. c. 25. repealed in part.
			11	6 Geo. 4. c. 84. repealed in part.
47	Salaries and Allowances of East India Company's Officers on Furlough.	XII.	1	33 Geo. 3. c. 52. amended.
			1, 2	3 & 4 Will. 4. c. 85. amended, &c.
48	Bankrupt Law Amendment (Ireland) -	IX.	9	6 & 7 Will. 4. c. 14. repealed in part
49	Malt Duties - - - - - - -	II.	1, 4, 6, 8	11 Geo. 4. & 1 Will. 4. c. 17. repealed in part.
			3	7 & 8 Geo. 4. c. 52. repealed in part.
50	Conveyance of Land and Buildings for Workhouses, &c.	VII.	- -	4 & 5 Will. 4. c. 76. 5 & 6 Will. 4. c. 69. } amended.
51	Loans for Public Works and Fisheries -	III.	- -	The following Acts amended, &c.: 57 Geo. 3. cc. 34. 124. 1 Geo. 4. c. 60. 1 & 2 Geo. 4. c. 111. 3 Geo. 4. c. 86. 4 Geo. 4. c. 63. 5 Geo. 4. cc. 36. 77. 6 Geo. 4. c. 35. 7 Geo. 4. c. 30. 7 & 8 Geo. 4. cc. 12. 47. 1 & 2 Will. 4. c. 24. 3 & 4 Will. 4. c. 32. 4 & 5 Will. 4. c. 72
52	Militia Ballot Suspension - - -	- -	- -	- - - - -
53	Amendment of the Act for extinguishing the secular Jurisdiction of the Archbishop of York and Bishop of Ely in certain Liberties.	(*c*) X. B.	1	6 & 7 Will. 4. c. 87. amended
54	Treasurers of Counties (Ireland) - -	IX.	11	4 Geo. 4. c. 33. applied - -

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
- - - - - -	- - -	- -	(*a*) This Act extends to the Isle of Man and the Channel Islands. s. 6. This Act is important to consolidators. (See s. 2.)	45
Altered by 14 & 15 Vict. c. 83. s. 18.	- - -	- -	- - - - -	46
- - - - - -	- - -	- -	- - - - -	47
- - - - - -	- - -	- -	- - - - -	48
- - - - - -	- - -	- -	- - - - -	49
Explained by 5 & 6 Vict. c. 18. ss. 1. 2. Incorporated by 5 & 6 Vict. c. 57. s. 18.	- - -	- -	- - - - -	50
Sect. 17. virtually repealed by 1 & 2 Vict. c. 88. s. 18. (*b*) Incorporated by { 3 & 4 Vict. c. 10. s. 16.; 5 & 6 Vict. c. 9. s. 14.; 9 & 10 Vict. c. 80. s. 9.; 10 & 11 Vict. c. 73. s. 2.; 14 & 15 Vict. c. 23. s. 9.; 19 & 20 Vict. c. 17. s. 10.	- - -	- -	(*b*) The express repeal appears to have been inadvertently omitted.	51
- - - - - -	Expired -	- -	- - - - -	52
Recited by 17 & 18 Vict. c. 105. s. 26.	- - -	- -	(*c*) Qu. Class VII. - -	53
Amended by 1 & 2 Vict. c. 53. Applied by { 1 & 2 Vict. c. 116. s. 1., and c. 104. s. 2.; 4 & 5 Vict. c. 41. s. 2. Amended, &c. by 6 & 7 Vict. c. 78. s. 3. &c. Applied by { 7 & 8 Vict. c. 106. s. 96.; 11 & 12 Vict. c. 1. s. 19.; 12 & 13 Vict. c. 91. s. 9. Altered by 13 & 14 Vict. c. 51. s. 23.	Sect. 20. spent	- -	- - - - -	54

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or relating to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
55	Regulation of Sheriffs' Fees upon Execution of Civil Process. (*a*)	VII.	1	42 Edw. 3. c. 9. repealed in part. 1 Hen. 5. c. 4. repealed. 23 Hen. 6. c. 9. repealed in part.
56	Attornies and Solicitors - - - - -	(*b*) IX.	1	1 & 2 Geo. 4. c. 48. 3 Geo. 4. c. 16. } amended. 2 & 3 Will. 4. c. 19. (Private printed.) referred to
			2	2 Geo. 2. c. 23, repealed in part.
57	Beetroot Sugar Duties - - - - -	II.	21	7 & 8 Geo. 4. c. 53. 4 & 5 Will. 4. c. 51. } applied.
58	Suspension of Proceedings for Recovery of Tithe Compositions Loans.	- -	- -	6 & 7 Will. 4. c. 95. revived and continued.
59	Bank of Ireland Advances Repayment -	- -	- -	1 & 2 Geo. 4. c. 72. 3 Geo. 4. c. 26. } affected.
60	Correction of mistaken References to His late Majesty in Acts of this Session.	IV.	- -	- - - - -
61	Assessed Taxes - - - - - -	II.	- -	52 Geo. 3. c. 93. 4 Geo. 4. c. 11. 3 & 4 Will. 4. c. 39. } recited.
			1	6 & 7 Will. 4. c. 65. amended.
			2, 3	43 Geo. 3. cc. 99. 161. 5 & 6 Will. 4. c. 20. } amended.
62	Treaties for Suppression of Slave Trade -	- -	- -	- - - - - -
63	Militia Pay, &c. - - - - - -	- -	- -	- - - - - -
64	Coroners of the County of Durham -	(*c*) VII.	- -	6 & 7 Will. 4. c. 19. recited.
			3	25 Geo. 2. c. 29. repealed in part.
65	Court of Exchequer (Scotland) - -	VIII.	2	2 & 3 Will. 4. c. 54. amended.
			4	5 & 6 Will. 4. c. 46. made perpetual.
66	Cruelty to Animals (Ireland) - -	- -	- -	5 & 6 Will. 4. c. 59. extended to Ireland, &c.
67	Arbitration of Disputes between Masters and Workmen.	(*d*) IV.	- -	5 Geo. 4. c. 96. amended - -
68	Expenses of Coroners' Inquests - -	VII.	2	6 & 7 Will. 4. c. 89. repealed in part -
69	Tithe Commutation Act Amendment -	VII.	- -	6 & 7 Will. 4. c. 71. amended - -
70	Haileybury College (*e*) - - -	XII.	3	3 & 4 Will. 4. c. 85. affected.
			4	33 Geo. 3. c. 52. repealed in part.
71	Suspension of Appointments to Cathedral Dignities, Sinecure Rectories, &c.	- -	- -	- - - - -

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
Applied by 5 & 6 Vict. c. 98. s. 31.	-	-	(*a*) The title of this Act is insufficient properly to cover its provisions. (See s. 1.)	55
Sect. 4 amended by 1 & 2 Vict. c. 45. s. 3. Repealed as to England by 6 & 7 Vict. c. 73. s. 1. and Sched. 1.	-	-	(*b*) Erroneously indexed by the Queen's Printers as relating to England only; s. 1. extends to Ireland. The Act is placed in Class IX., as it is now in force in Ireland only. See column 6.	56
Extended by 3 & 4 Vict. c. 57. Duties repealed by 8 & 9 Vict. c. 13. Applied by 17 & 18 Vict. c. 30. s. 3.	-	-	-	57
-	Expired	-	-	58
Affected by 1 & 2 Vict. c. 81.	Expired	-	-	59
-	-	-	-	60
-	-	-	-	61
Recited by 1 & 2 Vict. c. 102. 7 & 8 Vict. c. 26.	Expired	-	-	62
-	Expired	-	-	63
-	-	-	(*c*) Qu. Class X. B.	64
-	s. 1. spent	-	-	65
Repealed by 12 & 13 Vict. c. 92. s. 1.	-	-	-	66
-	-	-	(*d*) Erroneously indexed by the Queen's Printers as relating to Great Britain.	67
-	-	-	-	68
Amended by 2 & 3 Vict. c. 62. 3 & 4 Vict. c. 15. 9 & 10 Vict. c. 73.	-	-	-	69
Recited by 1 & 2 Vict. c. 22. s. 1.	-	-	(*e*) Virtually repealed as from 1st Jan. 1858 by 18 & 19 Vict. c. 53.	70
-	Expired	-	-	71

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or referring to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
72	Appointment of Lords Justices in case of the Absence of the Successor on the Demise of the Crown.	IV.	6	6 Ann. c. 7. referred to. 12 & 13 Will. 3. c. 2. 13 Car. 2. c. 4. 5 Ann. c. 6. (S.) } saved.
			7	1 Will. & Mar. c. 8. 6 Geo. 3. c. 53. 9 Geo. 4. c. 17. } applied.
73	Grants of Privileges by Letters Patent to Trading and other Companies. (*a*)	IV.	1	6 Geo. 4. c. 91. repealed in part. -
				4 & 5 Will. 4. c. 94. repealed.
			14	5 & 6 Will. 4. c. 62. applied.
74	Restraint on the Alienation of Corporate Property (Ireland).	IX.	- -	6 & 7 Will. 4. c. 100. amended -
75	Commission for Building New Churches -	- -	- -	- - - - -
76	Packet Postage on East India Letters, &c.	II.	- -	- - - - -
77	Central Criminal Court, Punishment of Death.	(*b*) VII.	- -	- - - - -
78	Municipal Corporations Act Amendment -	VII.	4, 11	5 & 6 Will. 4. c. 76. repealed in part
			26	11 Geo. 1. c. 4. extended.
			28, &c.	6 & 7 Will. 4. c. 104. explained, &c.
			34, 35	6 & 7 Will. 4. c. 105. extended.
			37	4 Geo. 4. c. 64. 5 Geo. 4. c. 85. 5 & 6 Will. 4. c. 38. } applied.
			41, &c.	6 & 7 Will. 4. c. 103. affected, &c.
79	Appropriation - - - -	- -	- -	- - - - -
80	Exemption from Usury Laws of certain Bills and Notes.	- -	- -	3 & 4 Will. 4. c. 98. extended -
81	Levying Borough Rates - - -	VII.	- -	5 & 6 Will. 4. c. 76. amended -
82	County of Fermanagh, Baronial Subdivisions.	(*c*) IX.	- -	6 & 7 Will. 4. c. 116. amended -
			2	6 & 7 Will. 4. c. 84. applied.
83	Compelling Clerks of the Peace, &c. to take the Custody of Documents deposited with them under the Standing Orders of either House of Parliament.	IV.	- -	- - - - -

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
- - - - -	- - -	- -	- - - - -	72
Referred to by { 7 & 8 Vict. c. 111. s. 1. 8 & 9 Vict. c. 98. s. 1.	- - -	- -	(*a*) This Act extends to the Colonies as regards the benefits conferred on Companies. s. 3.	73
Recited by { 1 & 2 Vict. c. 103. - 2 & 3 Vict. c. 76.	Sect. 1. expired.	- -	- - - - -	74
- - - - -	Expired. (See 19 & 20 Vict. c. 55. s. 1.)	- -	- - - - -	75
Repealed in part by 3 & 4 Vict. c. 96. s. 68.	- - -	- -	- - - - -	76
- - - - -	Sect. 2. spent.	- -	(*b*) Qu. Class X. B. - -	77
Amended by 6 & 7 Vict. c. 89. Extended by 16 & 17 Vict. c. 79.	- - -	- -	- - - - -	78
- - - - -	Spent -	- -	- - - - -	79
Recited by 2 & 3 Vict. c. 37. -	Expired -	- -	- - - - -	80
Repealed in part by 12 & 13 Vict. c. 65. s. 6.	- - -	- -	- - - - -	81
- - - - -	- - -	- -	(*c*) Qu. Class. X. D. - -	82
Applied by { 8 & 9 Vict. c. 16. s. 161.; c. 17. s. 165.; c. 18. s. 150.; c. 19. s. 142.; c. 20. ss. 9., 162.; and c. 33. s. 9. 10 & 11 Vict. c. 14. s. 58.; c. 15. s. 45.; c. 16. s. 110.; c. 17. ss. 9., 21., 90.; c. 27. ss. 9., 97.; c. 34. s. 214.; c. 65., s. 66.; and c. 89. s. 77. 14 & 15 Vict. c. 70. s. 11. 19 & 20 Vict. c. 24. s. 12.; and c. 66. s. 3.	- - -	- -	- - - - -	83

1. Chapter.	2. Subject Matter.	3. Class.	4. Section affecting or referring to Acts in Column 5.	5. Acts affected or referred to by Acts here registered.
84	Punishment of Death for Forgery, Abolition.	IV.	1	The following Acts virtually repealed in part: 11 Geo. 4. & 1 Will. 4. c. 66. 2 & 3 Will. 4. cc. 59. 123. 125. 5 & 6 Will. 4. cc. 45. 51.
			2	2 & 3 Will. 4. c. 123. 3 & 4 Will. 4. cc. 51. 44. } repealed in part.
			4	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
85	Amendment of Laws relating to Offences against the Person.	VI.	1	9 Geo. 4. c. 31. 10 Geo. 4. c. 34. } repealed in part.
			9	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
86	Amendment of Laws relating to Burglary -	VI.	1	7 & 8 Geo. 4. c. 29. 9 Geo. 4. c. 55. } repealed in part.
			8	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
87	Amendment of Laws relating to Robbery from the Person.	VI.	1	7 & 8 Geo. 4. c. 29. 9 Geo. 4. c. 55. } repealed in part.
			11	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
88	Amendment of Acts relating to Piracy -	(*a*) VII.	1	The following Acts repealed in part: 28 Hen. 8. c. 15. 11 & 12 Will. 3. c. 7. 4 Geo. 1. c. 11. 8 Geo. 1. c. 24. 18 Geo. 2. c. 30.
			6	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
89	Amendment of Laws relating to Burning or Destroying Buildings and Ships.	VI.	1	7 & 8 Geo. 4. c. 30. 9 Geo. 4. c. 56. } repealed in part.
			13	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
90	Amendment of Laws relating to Offences punishable by Transportation for Life.	(*b*) VI.	1	2 & 3 Will. 4. c. 62. 3 & 4 Will. 4. c. 44. } repealed in part.
			2	7 & 8 Geo. 4. cc. 29. 30. repealed in part.
			4	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
91	Punishment of Death, Abolition in certain Cases.	(*c*) IV.	1	The following Acts virtually repealed in part: 1 Geo. 1. stat. 2. c. 5. 25 Geo. 2. c 37. 31 Geo. 3. c. 17. (I.) 37 Geo. 3. c. 70. 37 Geo. 3. c. 40. (I.) 52 Geo. 3. c. 104. 59 Geo. 3. c. 136. 5 Geo. 4. c. 113. 3 & 4 Will. 4. c. 53.
			3	5 & 6 Will. 4. c. 38. 4 Geo. 4. c. 64. } saved.
			4	2 Jac. 1. c. 31. (*d*) repealed.

6. Subsequent Acts by which Acts here registered are affected or referred to.	7. Where Acts here registered are expired or spent.	8. Duration of Acts here registered where temporary and unexpired.	9. Remarks.	Chapter.
- - - - -	- - -	- -	- - - - -	84
Sect. 11. repealed (in part expressly, and as to residue consequentially) by 14 & 15 Vict. c. 100. s. 10.	- - -	- -	- - - - -	85
- - - - -	- - -	- -	- - - - -	86
Saved by 9 & 10 Vict. c. 99. s. 45. Recited by 10 & 11 Vict. c. 66.	- - -	- -	- - - - -	87
- - - - -	- - -	- -	Qu. rightly classed -	88
Amended by 7 & 8 Vict. c. 62. -	- - -	- -	- - - - -	89
Extended to the Colonies by 16 & 17 Vict. c. 48. s. 1.	- - -	- -	(*b*) Erroneously indexed by the Queen's Printers as relating to the United Kingdom.	90
- - - - -	- - -	- -	(*c*) Erroneously indexed by the Queen's Printers, as relating to England and Ireland only. (*d*) This Act contains several provisions for preventing infection from the plague. One provision only relates to the punishment of death, viz., s. 7., which renders infected persons liable to this punishment in certain cases.	91

APPENDIX No. 2.

REPORT BY THE LORDS COMMITTEES appointed a Select Committee to consider the Nine Criminal Law Bills, including those of last Session, with the Letters of the Judges to the Lord Chancellor, and to report as to the Course which it will be expedient to pursue in relation to the said Bills, and the Recommendations of the Criminal Law Commissioners:—

ORDERED TO REPORT,

THAT the Committee have met, and considered the several Bills and other matters referred to them, and have not thought it necessary to enter into the discussion of the advantages and disadvantages of attempting to reduce the whole Criminal Law into one written code, nor to enter into a detailed examination of the particular merits of the Bills now before them, because after mature consideration, they are of opinion that it is inexpedient at present to press forward any Digest except that of Statute Law, as on every account the step first to be made.

The Committee, however, are of opinion that great advantage may be derived from the very important and elaborate Reports of the Criminal Law Commissioners, and from the Bills already prepared, and from the introduction of others relating to as many of the remaining branches of the Criminal Law as are not affected by the present Bills, in which the Criminal Law, as defined by statutory enactments, should be consolidated; and in such Bills the Committee recommend that advantage should be taken of the valuable recommendations of the Criminal Law Commissioners for the improvement and simplification of the existing Law, and that such further improvements as may appear necessary should also be added.

And the Committee therefore recommend that the present Bills should be revised, and others prepared, for the purpose of carrying into effect the above objects, whereby the whole Statute Law relating to crime shall be completely consolidated, together with such amendments and additions as may be considered expedient, and from which the Committee are satisfied great advantage may be expected.

And the Committee further think that it will be advisable, after such Bills may have been passed, to take into consideration the Report of the Commissioners on Procedure, and so to revise and amend the same, that the whole course of Criminal Procedure may be embodied in one or more Statutes.

11th August 1854.

APPENDIX No. 3.

EXTRACT from the REPORT of the COMMISSIONERS appointed to inquire into the CONSOLIDATION of the STATUTE LAW, 1835.

THE expediency of consolidating the Statute Law has frequently been discussed by many of the most eminent jurists of this country, and also has occasionally been brought under the consideration of the legislature.

The names of Bacon, Hale[a], Coke[b], Blackstone, Wood[c], Daines Barrington and Eden, are to be found amongst those who have expressed opinions as to the propriety of a revision and digest of the Statutes.

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[a] The ancient Romans, who gloried no less in their laws than in their military discipline, found this to be true, namely, that in tract of time some of their laws grew contradictory, some obsolete, some impractical, some obscure, and the whole bulk of them too voluminous; so that in Justinian's time there was an incredible number of versicles and volumes of their laws; whereupon that excellent prince, by the advice of a great council or college of learned men (as once our English Justinian, King Edward the First, did by the laws of Wales) reduced them into a better compendium, which makes up now the body of the civil laws. And truly considering to how great a bulk the volumes and books of the common law have in process of time arisen, how many printed resolutions of the same cases or points, how many disagreeing reports there are touching the same matter, how many seeming contradictory opinions that would be explained or settled, how many titles are disused, it were to be wished that some complete *corpus juris communis* were extracted out of the many books of our English laws for the public use, and for the contracting of the laws into a narrower compass and method, at least for ordinary study. But this is a work of time, and requires many industrious and judicious hands and heads to assist in it.—Extract from C. J. Hale's Preface to Rolle's Abridgment.

[b] And yet concerning certain of our penal statutes, to repeal many that time hath antiquated as unprofitable, and remain but as snares to entangle the subject withal, and to omit all those that be repealed, that none by them be deceived, as for example, concerning drapery or such like; to make one plain and perspicuous law, divided into articles, so as every subject may know what Acts be in force, what repealed, either by particular or general words, in part or in the whole, or what branches and parts abridged, what enlarged, what expounded, so as each man may clearly know what and how much is of them in force, and how to obey them, it were a necessary work and worthy of singular commendation, which His Majesty, out of his great wisdom and care to the Commonwealth, hath commanded to be done; for as they now stand, it will require great pains in reading over all, great attention in observing, and greater judgment in discerning, upon consideration of the whole, what the law is in any one particular point; but with this caution, that there be certain statutes concerning the administration of justice, that are in effect *so woven into the common law, and so well approved by experience, as it will be no small danger to alter or change them;* and herein according to his royal commandment (God willing) somewhat in due time shall be performed.—Coke's Report, Vol. II., Part IV.—*Address to the Reader.*

[c] As our Statute Laws are monstrously overgrown (though many statutes are omitted in the printed books) they too want the skill of our legislators to bring them to a proper shape. If many of our statutes, with others continuing, enlarging, explaining, correcting, repealing, and reviving them, were, under their proper heads, thrown into *one* short and plain Act, it would render the study of our laws more inviting, and the statutes more intelligible to all those that are to be guided by them.—Preface to Wood's Institutes, p. iii.

An early notice of the subject is to be found in "King Edward's Remains,"* which contains the following passage: "Devising of good laws, I have showed my opinion heretofore, what Statutes I think most necessary to be enacted this sessions; nevertheless I would wish, that beside them hereafter, when time shall serve, the superfluous and tedious statutes were brought into one sum together, and made more plain and short to the intent that men might better understand them; which thing shall much help to advance the profit of the Commonwealth."

The following extract from Mr. Cooper's work on the Public Records, contains a notice of what has been attempted in former times with respect to a revision of the Statutes.

"A general revision of the Statute Law has been often recommended from the Throne, and has been petitioned for by both Houses of Parliament; it has engaged the labours of successive committees, and has been undertaken by individuals sometimes with, and sometimes without the sanction of Royal or Parliamentary authority; but has never yet been carried forward to any degree of maturity.

"In Queen Elizabeth's reign, A. D. 1557, Sir N. Bacon, Lord Keeper, drew up a short plan for reducing, ordering and printing the Statutes of the Realm. The following are the heads of this plan: [d] [e] First, where many lawes be made for one thing, the same are to be reduced and established into one lawe, and the former to be abrogated. Item, where there is but one lawe for one thing, that these lawes are to remain in case as they be. Item, that all the Actes be digested into titles, and printed according to the abridgment of the Statutes. Item, where part of one Acte standeth in force and another part abrogated, there should be no more printed, but that that standeth in force. The doeing of these things maie be committed to the persons hereunder written, if it shall so please her Majestie and her counsell, and daye wolde be given to the committees until the first daie of Michaelmas Terme next coming for the doing of this, and then they are to declare their doings, to be considered of by such persons as it shall please her Majestie to appoint." Then follow lists of twenty committees of four each, in which the judges, serjeants, attorney and solicitor general, &c., are named: one judge, &c., and three counsel forming a committee, to each of which it was proposed that a title or division of the Statute Law should be referred. The subject was afterwards taken into consideration, so far as related to the penal laws, at subsequent periods in the reign of the same Queen, viz. Anno 27, A. D. 1585 [e]; Anno 35, A. D. 1593 [f]; Anno 39 & 40, A. D. 1597 [g]; Anno 43, A. D. 1601 [h]. In the proceedings in 1593 and 1597, Sir Francis Bacon took part, and upon them he appears to have founded his sketch or plan of a general revisal of the Statute Law.[i]

"King James I., upon his accession to the throne of England (1603–4), and in subsequent periods of his reign[k], recommended also to Parliament a reform of all the Statute Law, and of the Penal Laws in particular.[l] In the year 1610 a digest and repeal of the

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* See Burnet's History of the Reformation, vol. ii.

[d] MS. Harl. N°. 249. [e] Dewes's Journ. 345. [f] Dewes's Journ. 469, 473.

[g] Dewes's Journ. 553. [h] Dewes's Journ. 622.

[i] See the following articles in Bacon's Works, viz.: Epistle Dedicatory to Queen Elizabeth, prefixed to Elements of the Law; Proposal for amending the Laws of England, to King James; Offer to the King of a Digest; 4to edit. vol. 2, p. 326, 546, 547, &c.

[k] "For I must needs confesse by that little experience I haue had since my comming hither, and I thinke I am able to prooue it, that the grounds of the Common Law of England are the best of any law in the world, either ciuil or municipall, and the fittest for this people; but as euery law would be cleare and full, so the obscuritie in some points of this our written law, and want of fullnesse in others, the variation of cases and men's curiositie breeding euery day new questions, hath enforced the iudges to iudge in many cases here, by cases and presidents, wherein I hope lawyers themselues will not denie, but that there must be a great vncertaintie, and I am sure all the rest of you that are gentlemen of other professions were long agoe wearie of it, if you could haue had it amended; for where there is varietie and vncertaintie, although a iust iudge may do rightly, yet an ill iudge may take aduantage to doe wrong; and then are all honest men that succeede him, tied in a maner to his vniust and partiall conclusions. Wherefore, leaue not the law to the pleasure of the iudge, but let your lawes be looked into, for I desire not the abolishing of the lawes, but onely the clearing and the sweeping off the rust of them, and that by Parliament our lawes might be cleared and made knowen to all the subjects. Yea, rather it were less hurt, that all the approued cases were set downe and allowed by Parliament for standing lawes in all time to come: for although some of them, peraduenture, may be vniust, as set downe by corrupt iudges; yet better it is to haue a certaine law with some spots in it, nor liue vnder such an vncertaine and arbitrarie law."—*A Speech at Whitehall*, March 1607.

"Next, our Common Law hath not a setled text in all cases, being chiefly grounded either vpon old customes, or else vpon the reports and cases of iudges, which ye call *responsa prudentum*: the like whereof is in all other lawes, for they are much ruled by presidents (save onely in *Denmarke* and *Norway*, where the letter of the law resolues all doubts without any trouble to the iudge); but though it be trew, that no text of law can be so certaine, wherein the circumstances will not make a variation in the case (for in this aage men's wits increase so much by ciuilitie, that the circumstances of euery particular case varies so much from the generall text of law, as in the ciuill law itselfe; there are, therefore, so many doctors that coment vpon the text, and neuer a one almost agrees with another; otherwise there needed no iudges, but the bare letter of the law); yet could I wish that some more certaintie were set downe in this case by Parliament; for since the very reports themselues are not alwayes so binding, but that diuers times iudges doe disclaim them, and recede from the judgment of their predecessors, it were good that vpon a mature deliberation the exposition of the law were set downe by Acte of Parliament, and such reports therein confirmed as were thought fit to serue for law in all times hereafter, and so the people should not depend vpon the bare opinions of iudges, and vncertain reports.

"And, lastly, there be in the Common Law diuers contrary reports and presidents, and this corruption doeth likewise concerne the Statutes and Acts of Parliament, in respect there are diuers crosse and cuffing statutes, and some so penned as they may be taken in diuers, yea, contrary sences; and therefore would I wish both those statutes and reports, as well in the Parliament as Common Law, to be once maturely reuiewed and reconciled; and that not onely all contrarieties should be scraped out of our bookes, but euen that such penall statutes as were made but for the vse of the time, (from breach whereof no man can be free,) which doe not now agree with the condition of this our time, might likewise be left out of our bookes, which vnder a tyrannous or auaricious King could not be endured. And this reformation might (me thinkes) bee made a worthy worke, and well deserues a Parliament to be set of purpose for it."—*A Speech at Whitehall*, March 1609.

[l] See Lords' Journals, 1. 144; 2. 661; 3. 81; and Preface to Coke's Fourth Report.

Penal Laws was expressly stipulated for by the House of Commons, and acceded to by the House of Lords, in their joint transaction of the great contract with the Crown[m]; and in the same reign, Sir Francis Bacon, Lord C. J. Hobart, Serjeant Finch, Mr. Noye, and others, by the King's command, made considerable progress in the general work of reforming and recompiling the Statute Law, which Lord Bacon describes[n] as 'an excellent undertaking, of honour to His Majesty's times, and of good to all times;' and recommends, in imitation of the Statutes of 27 Hen. VIII. c. 15, and 3 & 4 Edw. VI. c. 11, for appointing Commissioners to examine and establish Ecclesiastical Laws, that Commissioners be named by both Houses for this purpose; also with power not to conclude, but only to prepare and propound the matter to Parliament. In the British Museum is preserved a manuscript volume[o], containing the plan of an elaborate Report, particularizing the several Statutes from the Statutes of Westminster the first, 3 Edw. I. to 7 Jac. I., 1609, then actually repealed or expired; and also the statutes thought fit either to be absolutely repealed, or to be repealed, and new laws to be made in their place. Possibly this may be the very work spoken of by Sir Francis Bacon.[p] It is drawn up as by authority, with detailed reasons for every proposed measure; but it is not signed by or addressed to any one. A table is subjoined to it, exhibiting the result of the Report. Among the papers of Mr. Petyt, in the Inner Temple Library[q], is a letter of Lord Bacon's, dated 27th February 1608, which shows that he had the advantage of using, for his proposed plan, a manuscript collection of the Statutes, made with great labour by Mr. Michael Heneage, Keeper of the Tower Records, in five large volumes, which it is feared has been lost. Lord Bacon's disgrace, at the latter period of the reign of King James I., and the distractions of the government in what related to Parliament, were probably the causes of the failure of these measures, and of the silence that ensues respecting them in Parliamentary History.

"During the usurpation the same undertaking was resumed with ardour. In 1650, a committee was named, one of the members whereof was Bulstrode Whitelock, then first lord commissioner for the custody of the great seal: the purpose was 'to revise all former statutes and ordinances now in force, and consider as well which are fit to be continued, altered, or repealed, as how the same may be reduced into a compendious way and exact method, for the more ease and clearer understanding of the people.' And the committee were empowered 'to advise with the judges, and to send for and to employ and call to their assistance therein any other persons whom they should think fit, for the better effecting thereof, and to prepare the same for the further consideration of the House, and to make report thereof.'[r] But no such report has been preserved. In 1651–2, Matthew Hale, esq., afterwards Lord Chief Justice Hale, Sir Anthony Astley Cooper, afterwards Lord Shaftesbury, and Rushworth, the author of the Historical Collections, with other persons out of the House, were appointed to report to the committee the opinions upon the inconveniences of the law; and a revised system of the law was reported to the House in the course of the same year[s]. The same labour was afterwards transferred to other hands, but the work was not abandoned; and in 1653 a committee was appointed to consider of a new model or body of the law.[t] But of this committee no proceedings are now discoverable.

"After the restoration, Finch, solicitor-general, afterwards Earl of Nottingham and Lord Chancellor, Serjeant Maynard, Sir Robert Atkins, Mr. Prynne, and others, were appointed in 1666, to be a committee 'to confer with such of the Lords, the Judges, and other persons of the long robe who have already taken pains and made progress in perusing the Statute Laws; and to consider of repealing such former Statute Laws as they shall find necessary to be repealed; and of expedients for reducing all Statute Laws of one nature under such a method and head as may conduce to the more ready understanding and better execution of such laws.'[u] This, however, was as ineffectual as any of the former measures."

The House of Commons in their treaty with King James the First for the abolition of the Court of Wards, made it a part of their claim, "That His Majesty be petitioned to appoint some to make a diligent inquiry of all the Penal Statutes of the realm, to the end that such as are obsolete and unprofitable may be repealed; and that for the better ease and certainty of the subject, all such as are profitable concerning one matter may be reduced into one statute."

Mr. Pepys, in his Diary, vol. i. p. 403, mentions a conversation which he had with Mr. Prynne, from which the opinion of that celebrated lawyer and antiquary appears:—

"Mr. Prynne did discourse with me about the laws of England, telling me the main faults in them, amongst others their obscurity; through multitudes of long statutes, which he is about to abstract out of, all of a sort, and as he lives, and Parliaments come, get them put into laws, and other statutes repealed; and then it will be short work to know the law."

Reference appears also to have been made to the subject in the Reports on the Promulgation of the Statutes and on temporary Laws, in 1796 and 1803.

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[m] Lord's Journ. 2. 661.
[n] Works, vol. ii. 4. to 547.
[o] MS. Harl. N° 244.
[p] Works, vol. 2. p. 546.
[q] Miscell. 17, p. 279.
[r] Commons' Journ. 6. 427.
[s] Commons' Journ. 7, 58, 74, 249, 250.
[t] Ibid. 7, 304.
[u] Ibid. 8, 631.

The Honourable Daines Barrington has inserted in an Appendix to his Work on the ancient statutes, a proposal for revising the Statute Law; in which, after noticing some objections which had been made to part of the system of laws of this country, he observes, "the reformation of the Code of Statutes, however, so far as to repeal obsolete, and sometimes dangerous laws, as well as the reducing the different Acts of Parliament which relate to the same subject into one consistent statute, would be a salutary, nay, is almost become a necessary work. Many Acts of Parliament fortunately, for the most part, lie buried in the statute books till the spleen of individuals calls them forth, to the disgrace of the law and the distress of the person prosecuted." *See* Appendix, No. 2.

The Commissioners on Public Records, in 1806, turned their attention to the expediency of revising and consolidating the Statute Law; as it appears from their proceedings that it was resolved, "That Francis Hargrave, esquire, should be requested to consider and report to the Board as to the best method of reducing the Statute Law into a smaller compass and more systematic form, and of revising and amending the same, in the whole or in part; repealing what is obsolete, and consolidating what consists of needless repetition; specifying the general heads of the Statute Law most necessary to be dealt with in either way; the best method of rendering the style of our future statutes more correct, concise, and uniform in their forms of expression, and at the same time more perspicuous in the arrangement of their enactments and provisions; with a statement of such practical rules as appear to be most effectual for this purpose."

It is understood, that Mr. Hargrave did not make any Report on this important subject, although we believe that this very learned gentleman made considerable collections towards enabling him to perform the task so judiciously entrusted to him.

In the year 1816 the House of Lords came to two resolutions, declaring the expediency, in their opinion, of arranging the enactments in the Statute Book under separate and distinct heads, and that a person learned in the law should be appointed for this purpose, with a number of clerks under him, not exceeding twenty; which being communicated to the House of Commons, the following resolution was adopted by that House: "That this House doth agree with the Lords in the said resolution so amended; that from the present state of the Statute Law of this realm it is highly expedient that effectual measures should be taken to arrange the matters contained in the Statutes of the United Kingdom of Great Britain and Ireland, and in the Statutes passed in the separate Parliaments of England, Scotland, and Ireland respectively, under distinct and proper heads.

LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationary Office.

REPORT

OF

THE COMMISSIONERS

APPOINTED TO CONSIDER THE SUBJECT OF THE

REGISTRATION OF TITLE

WITH REFERENCE TO THE

SALE AND TRANSFER OF LAND.

THE REFORM CLUB PALL MALL

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1857.

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VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Spencer Horatio Walpole and Joseph Napier, Our trusty and well-beloved Sir Alexander James Edmund Cockburn, Knight, Our Attorney General, Our trusty and well-beloved Sir Richard Bethell, Knight, Our Solicitor General, Thomas Emerson Headlam and Vincent Scully, Esquires, Two of Our Counsel learned in the Law, Robert Lowe and William David Lewis, Esquires, Barristers-at-Law, Henry Drummond, John Evelyn Denison, Robert Wilson, and William Strickland Cookson, Esquires, Greeting:

Whereas a Select Committee of the House of Commons to whom a Bill for the Registration of Assurances, and certain other Bills for the facilitating the Sale and Transfer of Land, and to facilitate the Transfer of Land in Ireland, were referred for Consideration during the last Session of Parliament, recommended the immediate Appointment of a Commission for the Purpose of considering the Subject of Registration of Title with reference to facilitating the Sale and Transfer of Land:

Now know ye, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Spencer Horatio Walpole, Joseph Napier, Sir Alexander James Edmund Cockburn, Sir Richard Bethell, Thomas Emerson Headlam, Vincent Scully, Robert Lowe, William David Lewis, Henry Drummond, John Evelyn Denison, Robert Wilson, and William Strickland Cookson, or any Four or more of you, to consider the Subject of the Registration of Title with reference to the Sale and Transfer of Land, and generally to inquire into and consider the Advantages and Disadvantages attending such a System.

And for the better Discovery of the Truth in the Premises We do by these Presents give and grant to you, or any Four or more of you, full Power and Authority to call before you such Persons as you shall judge necessary by whom you may be the better informed on the Subject of this Our Commission and of every Matter connected therewith, and also to call for, have Access to, and examine all such official Books, Documents, Papers, and Records as may afford the fullest Information on the Subject, and to inquire of and concerning the Premises by all other lawful Ways and Means whatsoever.

And Our further Will and Pleasure is, that you do, within One Year after the Date of this Our Commission, or sooner if the same can conveniently be done (using all Diligence), certify to Us in Our Court of Chancery, under the

Commission appointing Commissioners to consider the Subject of the Registration of Title with reference to the Sale and Transfer of Land.

Hands and Seals of you or any Four or more of you, what you shall have done in the Premises. And We further will and command that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Four or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved George Williams Sanders, Esquire, Barrister-at-Law, to be Secretary to this Our Commission, and to attend you, whose Services we require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Eighteenth Day of January 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,

(Signed) PALMERSTON.

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REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY,
IN HER HIGH COURT OF CHANCERY.

In pursuance of Your Majesty's Commission authorizing and appointing us to "consider the subject of the Registration of Title with reference to the "sale and transfer of land, and generally to inquire into and consider the "advantages and disadvantages attending such a system," We, Your Majesty's Commissioners, humbly beg leave to present to Your Majesty the following Report:

Origin of inquiry.

I. The issuing of this Commission was recommended by a Select Committee of the House of Commons, to whom a bill for the registration of assurances, and certain other bills for facilitating the sale and transfer of land, were referred for consideration during the Parliamentary session of 1853. Under these circumstances we deem it right to advert to the report of that Committee and the evidence appended to it, in order that we may ascertain and constantly bear in mind the full scope and object of the inquiry, which by Your Majesty's command we have undertaken.

Report of Select Committee of the House of Commons on Registration of Assurances Bill, 1853, and other Bills.

II. We find that three bills were submitted to the consideration of the Committee, the first of which had been sent down from the House of Lords. These bills were entitled: 1. A bill for the registration of assurances. 2. A bill to facilitate the sale and purchase of land. And 3. A bill to facilitate the transfer of land in Ireland. The Committee reported that the first of these bills contained within itself two distinct principles of registration; the one, contemplating the registration of all assurances in any manner relating to land, and the legal or equitable estate and interest therein; the other, proposing that the legal title alone should be entered in the registry, and that there should be no necessity to register the instruments which declare or transmit the beneficial interest or equitable ownership. They also stated that the two other bills proceeded upon a principle similar to that last referred to as contained in the first bill, namely, the principle of keeping the registered ownership wholly separate and apart from the equitable right or title. And they further observed that "pursuing that idea, and confining their attention "to that principle, they had examined some witnesses of high professional "reputation, who had brought under their notice a scheme for the registration "of title or of legal ownership, which, if it could be fully developed and "made capable of easy practical operation, would appear to them to fulfil the "most important conditions of registration, and to afford the means of ensuring "great facility for the transfer of land combined with great simplicity and "security of title."

The advantages to be derived from some system of registration of land are therefore assumed by the Committee, provided that the difficulties which have hitherto stood in the way of a practical settlement of this important question can be removed or obviated.

Evidence made use of in this inquiry.

III. In prosecuting our inquiries we have availed ourselves of the labours of former Commissioners, especially the second report of the Real Property Commissioners in 1832, and the report of the Registration and Conveyancing

Commissioners in 1850. We have also consulted the report of the Commissioners appointed to inquire into the working of the Encumbered Estates Court in Ireland in 1855, and the evidence taken before the Select Committee of the House of Commons on the Registration of Assurances in 1853, and we have referred to the report in 1856 of the Select Committee of the House of Commons on the Court of Chancery (Ireland) bills.

We have further directed a series of questions to be circulated in different parts of the kingdom among persons practically acquainted with the subject; and these questions, together with the answers thereto, will be found in the Appendix. We have likewise examined some witnesses vivâ voce, partly with the view of ascertaining more accurately the nature of the plan submitted to the House of Commons in 1853; partly to obtain information on the subject of maps, which afford in the opinion of many persons the best means of describing and identifying landed property, and indexing registered titles of it; and partly to learn how the system of stop-orders or distringases works at the Bank of England in restraining the transfer of the public funds.

We have also the pleasure of acknowledging that we have been assisted in our inquiries by different observations and suggestions which have been communicated to us upon the subject of registration, two of which papers we have printed in the Appendix (*a*), and by several publications upon the subject of registration, and the means of improving the title to landed property, which have been laid before us by the authors of them, and which are mentioned in the note below. (*b*)

As to Registration generally—the Existing Systems—and the Failure of previous Attempts at a general Registration.

Expediency of some registration.

IV. We need not dwell on the advantages to be derived from registration of the ownership of land; they are and have been for a long time very generally admitted.

In the earlier periods of our history publicity was considered essential in almost all dealings with landed property. The transfer of the immediate freehold in possession was made notorious by livery of seisin; the transfer of the remainder or reversion was made equally notorious by the attornment of the tenant of the estate in possession, by which he recognised the new proprietor; the surrender of copyholds, followed by the admission of the copyholder, was an open avowal in the presence of the lord, and before the whole homage, that an old tenant had died or disposed of his interest, and that a new tenant had come into the manor and taken his place; fines with proclamations were public acknowledgments in the King's Courts that an estate which was supposed to belong to one man was in truth the estate or property of another; while easements, such as rights of way and rights of water, were evidenced and kept in existence by the notoriety of continued user and actual enjoyment. The Statutes of Uses and Enrolments were passed with similar objects. By them the Legislature sought to abolish that secret transfer of land which had begun to prevail by means of private confidences, enforced by the jurisdiction of

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(*a*) "A Plan for the Registration of Titles to Land," by Mr. Randal Macdonnell. Letter and Plan of Mr. Edward Thomas Wakefield.

(*b*) "Shall we Transfer our Lands by Register?" by Joseph Goodeve, Esq. "Suggestions for a General Index of Title to Real and Personal Property," by W. R. A. Boyle, Esq. "The Annihilation of past Titles considered as the only effectual Amelioration of present Titles, with a Scheme for its Accomplishment," by T. P. Keene, Esq. There has also been published since this Report was in print, a pamphlet entitled "The Transfer of Land by means of a Judicial Assurance: its Practicability and Advantages considered in a Letter to SirRichard Bethell, M.P." By Isaac Butt, Esq., Q.C.

Courts of Equity. Accordingly the former of these Statutes transferred the use into possession; while the latter rendered void any bargain and sale limiting an estate of freehold which was not enrolled in the Court of Chancery. But the object of these provisions was soon evaded by a subtle construction and contrivance; and instead of giving publicity and notoriety to equitable transfers, the Statute of Uses was so interpreted as to make even legal conveyances, what they never were before, secret. So obvious were the evils resulting from this change, that from the time of James the First to the present, repeated attempts have been made to remedy them by means of public registration, but made in vain. An historical account of these attempts was furnished by Mr. Sanders to the Registration and Conveyancing Commissioners, and it will be found at length in the 6th Appendix to their report. (*a*) It appears therefrom that the principle of registration has been constantly recommended by the ablest lawyers and statesmen; that this principle has been repeatedly recognized by both Houses of Parliament separately, though they have failed to agree in the details of a measure which might pass into a law; that the difficulty and uncertainty of finding out such charges and incumbrances as affected the land was early considered to be highly prejudicial to purchasers and creditors; that as early as the reign of Charles the Second (*b*) this uncertainty of titles to estates was deemed to be "one cause of the decay of rents and value of lands;" and that the same conviction, instead of being diminished, has been so much strengthened by subsequent experience, that upwards of twenty bills have within the course of the last twenty years been brought into Parliament for the purpose of establishing systems of registration. It should also be remembered that the Select Committee of the House of Lords appointed to inquire into the Burdens upon Land, having attributed the diminution of the marketable value of real property to the tedious and expensive process attending its transfer, expressed themselves as anxious to impress on the House the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix and vexatious system. They also recommended the improvement of the law of real property, the simplification of titles and of the forms of conveyance, and the establishment of some effective system in the registration of deeds.

Failure of previous measures owing to the objections to a registration of assurances.

V. With such a remarkable concurrence of opinion, the failure of measures so often proposed and so generally desired can hardly be attributed to any other cause than the practical difficulties which, upon examination, are seen to be inherent in or likely to result from a system of registration of assurances. The fear that such a system of registration would be found to be productive of evils as great, or nearly as great, as those against which it was intended to provide, was probably the main reason which induced the Select Committee of the House of Commons in 1853 to pause in adopting the bill then before them, and to suggest, instead of passing a measure of that description, the appointment of a Commission for the purpose of considering the subject of registration of title, with a view to facilitate the sale and transfer of land. Bearing this in mind, we deemed it our duty in the first instance to address ourselves more particularly to a careful examination of the defects imputed and the objections entertained to a system of registration of assurances, in order that we might judge how far they might be remedied and overcome by a system of registration of title.

Matters to be considered with reference to a system of registration.

VI. In order to form a just opinion as to the suitableness or sufficiency of a Register of Assurances, or of the species of registration which we are

(*a*) See the Report of the Registration and Conveyancing Commissioners, p. 232.

(*b*) 1669, Lords' Journals, vol. xii. p. 273.

appointed to consider as a remedy for the objections it is intended to remove, it may be desirable that we should first advert to the examples already existing in our law of modes of registration; secondly, to the chief causes and grounds of complaint which are alleged against the existing system of transfer of land; and thirdly, to the peculiarities in the law of real property and the practice of conveyancing, which cast, as it is considered, unfair burdens on the owners of land, and injuriously interfere with the profitable use and enjoyment of land.

The different kinds of registration existing.

VII. Various systems and methods of registration are found actually existing in practice, for the protection of the title to landed and other property. The peculiarities and incidents of these different systems we think it necessary to bear in mind in the investigation of the subject before us.

The various kinds of registry, or modes of registration, to which we refer, differ materially in their objects and their extent, and may be distinguished as follows:—

1. A Register of Incumbrances and Securities for Debt; as,
   The Registers of Judgments (*a*), Grants of Annuities (*b*), Warrants of Attorney (*c*), Crown Debts and Recognizances (*d*), and Cases of Lis pendens. (*e*)
2. A Register or Inrolment of particular classes of Deeds, or Deeds having particular objects; as,
   The Inrolment of Deeds of Bargain and Sale (*f*), Disentailing Assurances, or Deeds executed for barring estates tail (*g*), and Bills of Sale of Personal Chattels capable of Delivery. (*h*)
3. A Register of Memorials, or brief abstracts of Deeds and Instruments; as,
   The Registers of Memorials of Deeds and Wills affecting Lands in Ireland (*i*), and in the counties of Middlesex (*k*), and York. (*l*)
4. An Inrolment of the Deeds themselves, or full copies of them, and extending to all Deeds; as,
   The Inrolment of Deeds affecting Lands in the Bedford Level. (*m*)
5. A Register of the Title or actual Ownership, independently and irrespectively of the past transactions or deeds by which it has been acquired.
   Such is the Register in the books of the Bank of England of the public stocks and funds.

Possible extension of some of the existing systems.

VIII. Besides the foregoing, other schemes or systems of registration, somewhat different in principle, have, as matters of theory, been suggested; but we believe that no examples are found in actual operation in our own country of

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(*a*) Established in 1692 by the 4 & 5 William and Mary, c. 20., and since varied and extended by the 1 & 2 Vict. c. 110., and 2 & 3 Vict. c. 11., and 18 & 19 Vict. c. 15.

(*b*) Established in 1777 by the 17 Geo. 3. c. 26., and varied and improved by the 53 Geo. 3. c. 141., subsequently repealed by the Act abolishing the laws relating to Usury, 17 & 18 Vict. c. 90., but restored in an amended form by the 18 & 19 Vict. c. 15. s. 12.

(*c*) Established in 1822 by the 3 Geo. 4. c. 39., extended by 6 & 7 Vict. c. 66.

(*d*) Established in 1839 by the 2 & 3 Vict. c. 11. ss. 8, 9.

(*e*) Established in 1839 by the 2 & 3 Vict. c. 11. s. 7.

(*f*) Established in 1535 by the Statute 27 Hen. 8. c. 16.

(*g*) Established in 1833 by the 3 & 4 Will. 4. c. 74. s. 41.

(*h*) Established in 1854 by the 17 & 18 Vict. c. 36.

(*i*) Established in 1707 by the Irish Statute 6 Anne, c. 2.

(*k*) Established as to the several Ridings in the years 1703, 1707, and 1735 by the Statutes 2 & 3 Anne c. 4., 6 Anne, c. 35., and 8 G. 2. c. 6.

(*l*) Established in the year 1708 by the Statute 7 Anne, c. 20.

(*m*) Established in 1663 by the Act for draining the Bedford Level, 15 Car. 2. c. 17. s. 8.

any other modes or kinds of registration than those above detailed, unless the Court Rolls of Manors form an exception.

If the 4th of the above-mentioned systems were made to extend to the whole country, it would be what is termed a general Register of Assurances, and would supersede the 2nd and 3rd.

If the 5th of these systems were extended to land, or if a register upon similar principles were applied to the ownership of land, it would exclude, or at all events might be made to render superfluous, the 2nd, 3rd, and 4th systems, and (with the addition of suitable provisions) the 1st also.

Policy of existing systems.

IX. It is important to observe that this institution of registry has always, in each of its several forms, been directed to the attainment of one specific object of public policy, and founded upon a regard to one broad and distinctly defined interest of the community; namely, the security of title and of transactions by means of notoriety and the perpetuation of evidence. (*a*)

(*a*) The Act of 4 & 5 William and Mary, requiring judgments to be docketed, contains the following recital:—"Whereas great mischiefs and damages happen and come as well to persons "in their lifetimes, but more often to their heirs, executors, and administrators, and also to "purchasers and mortgagees, by judgments entered upon record in their Majesty's Courts at "Westminster against the persons defendants, by reason of the difficulty there is in finding "out such judgments."

The Act establishing a Register of Grants of Annuities contains the preamble:—"Whereas "the pernicious practice of raising money by the sale of life annuities hath of late years greatly "increased, and is much promoted by the secrecy with which such transactions are conducted." And the Act of 18 & 19 Vict., which regulates the present register of life annuities, is expressly grounded on the fact, that "purchasers are no longer enabled to ascertain by search what "life annuities or rent charges may have been granted by their vendors or others."

The Register of Warrants of Attorney is required, because "injustice is frequently done to "creditors by secret warrants of attorney to confess judgments for securing the payment of "money, whereby persons in a state of insolvency are enabled to keep up the appearance of "being in good circumstances, and the persons holding such warrants of attorney have the power "of taking the property of such insolvents in execution at any time, to the exclusion of the rest "of their creditors." And the Act of 6 & 7 Vict., passed to enlarge the provisions of the previous Act, proceeds upon the ground that "greater facilities should be given to persons in "searching the books" in which the particulars of the warrants of attorney are entered, "and "obtaining the information contained theren."

The Register of Crown Debts and cases of Lis pendens is founded on the principle "that "further protection should be afforded to purchasers" against those incumbrances.

The policy of the Statute of Inrolments, 27 Hen. 8. c. 16., we are told by Chief Baron Gilbert, was to remedy the effect of the Statute of Uses, which, "by executing all uses raised, introduced "a secret way of conveyance contrary to the policy of the common law." Accordingly, the Statute provides that the deeds, when inrolled, shall remain in the custody of the custos rotulorum, amongst the other records of the counties, to the intent that every party that "hath to do "therewith may resort and see the effect and tenor of every such writing so inrolled."

The inrolment of disentailing deeds, it cannot be doubted, was required in order to answer the purposes of notoriety and perpetuation of evidence, which, in theory at least, were promoted or secured in the former practice of levying fines and suffering recoveries.

The registration of bills of sale is required upon the ground that "frauds are frequently "committed upon creditors by secret bills of sale of personal chattels, whereby persons are "enabled to keep up the appearance of being in good circumstances and possessed of property, "and the grantees or holders of such bills of sale have the power of taking possession of the "property of such persons, to the exclusion of the rest of their creditors."

The Irish Registry Act is grounded on the principle of "securing purchasers, preventing "forgeries, and fraudulent gifts and conveyances of lands," &c.

The West Riding Registry Act states, that "most of the traders in the West Riding are free-"holders, and have frequent occasions to borrow money upon their estates for managing their "trade, but for want of a register find it difficult to give security to the satisfaction of the "money lenders, although the security they offer be really good, by means whereof the said "trade is very much obstructed, and many families ruined." The North and East Riding and the Middlesex Registry Acts contain preambles, one of which states, that "by the different and "secret ways of conveying lands, such as are ill disposed have it in their power to commit "frauds, and frequently do so, by means whereof several persons have been undone in their "purchases and mortgages by prior and secret conveyances and fraudulent incumbrances, and "not only themselves but their whole families thereby utterly ruined."

Extension of that policy.

X. This policy accordingly long since suggested the project of establishing a general register of all deeds affecting the title to the landed property of the kingdom, or, as it has been of late years termed, a Register of Assurances.

It was moreover considered that such a measure would furnish a remedy for many admitted evils in our real property system, or was the necessary precursor or accompaniment of any attempt to remedy those evils.

Present state of the law as to landed titles.

XI. By the law of England the possession of land does not conclusively prove the possessor to be entitled to it or to have the right of disposing of it.

The ownership of land is not a simple right, or quantity, or a right which exists only in a simple or single form,—like that of a chair or a sum of stock,—but is susceptible of modification, by deeds, into a number of independent quantities and degrees of ownership.

These lesser ownerships in the land, if called into existence, must all reunite or coalesce in order to confer the complete title to the land; or, in other words, the subsequent derivation of title must be traced through and must include them.

A possession or transfer inconsistent with them does not put an end to them; they remain integral parts of the title so long as the terms of their own creation admit of their taking effect, and the Statute of Limitations has not barred them.

There is no record in law of the derivation of the title except the title-deeds, and there is no security in law that such title-deeds may not be suppressed or improperly withheld.

A retrospective investigation of the title (or, in other words, the former dealings with the land) must therefore take place on the occasion of a sale, in order to ascertain that the possessor is also the owner, and that no qualifying rights exist.

Though by such means the title be ascertained to be valid, the law provides no permanent or binding record of that fact, or of the fact of ownership, to serve as a rest in the title, or form the foundation of its future deduction.

It becomes necessary, therefore, on the occasion of subsequent dealings with new purchasers, that such purchasers should, in their own interest and for their own protection, repeat the investigation which took place before, and examine the title retrospectively from the date of their own contract, without relying on the previous transfer, or the possession enjoyed under it, and treating these as possibly illusory merely.

Lastly, according (*a*) to the law of England, the right to the possession, and to recover the rents and profits of real property in a court of law, may be vested in one person, while another is the beneficial owner. The person who is entitled at law is technically said to have the legal estate, and the beneficial owner is technically said to have the equitable estate. All actions and proceedings in courts of law must be brought and defended in the name of the person who has the legal estate: the person who has the equitable estate can only enforce his rights through the medium of a Court of Equity.

Evils of the present state of the law

XII. Such being the general outline of the nature of landed titles in this country, persons intending to become buyers of land find the practical working and consequences of the system to be something like the following:—

1. There being no registry of deeds or of ownership, fraudulent titles may be made by the suppression or destruction of title-deeds.

2. There is consequently a general insecurity of title and apprehension of

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(*a*) 2 Re. Pr. Com. Rep. p. 7.

risk, even when, to all external appearances, there is an absence of any ground for suspicion.

3. The evidence of title, for want of a register, is at best inferential and negative. The title can never be affirmatively and positively shown to be good. The possibility of its being impeachable cannot be excluded. Notwithstanding the dangers, however, thus to be encountered, a person who has entered into a contract of purchase in the usual way, without any information as to the title, is compellable to fulfil his contract, unless he can prove facts showing the title to be bad or judicially doubtful; the possible existence of documents unproduced not being a ground of defence. (*a*)

4. Should the subject-matter of the purchase be only an equitable estate, the purchaser may be defeated by a subsequent purchaser (without notice) of the same estate, if he happens first to succeed in procuring a transfer of the legal estate.

5. Even an innocent purchaser who may possess the legal estate may be put to proof that, at the time of his purchase, he had not notice of some dealing or transaction for which priority is claimed; and such notice may be imputed to him constructively from an infinite variety of circumstances.

6. A second mortgagee may, notwithstanding notice given by him to the first, find his security destroyed by a transfer from the first mortgagee to the third, unless the latter at the time of his loan had notice of the second mortgage.

7. Thus, equitable and derivative or secondary estates become, in fact, not marketable.

8. Contests and artificial contrivances to obtain priority by getting in the legal estate become inevitable; and these merely in order to incline the legal balance in favour of one innocent victim of a fraud as against another equally innocent. Moreover (*b*), those expenses in the transfer and disposition of real property which arise from the necessity of obtaining conveyances and assignments of outstanding legal estates are very oppressive, and they are submitted to with the more reluctance because they proceed from a fictitious distinction, which is unintelligible except to professional persons. The expense of applications to the Court of Chancery, to enable trustees under disability to convey, and of the general evidence of representation and deduction of title to trust estates, with the deeds relating to them, frequently exceed very considerably the expense of the conveyance, or other principal deed for effecting the real object of the parties.

9. Deeds are liable to be lost, and there is no permanent evidence of the contents of the lost deeds.

10. Constant difficulty is experienced in obtaining the production of deeds when they relate in common to two or more estates, or to the divided parts of an estate which was once entire.

11. By this difficulty of obtaining the production of deeds or insuring their production to buyers, and by the loss of deeds, titles are rendered unmarketable.

12. Disputes arise as to the proper custody of the title-deeds.

13. The possession of the title-deeds by law belongs to the person first interested in the freehold, and this possession, without a registry of the deeds, enables, in many cases, the party having their custody to destroy, to suppress, or even to fabricate particular instruments, in fraud of other persons entitled to posterior interests and in fraud of buyers and lenders.

(*a*) 2 Re. Pr. Com. Rep. pp. 5, 6.
(*b*) 2 Re. Pr. Com. Rep., App., p. 128.

14. There being no registry of the ownership and there being no conclusive record of the past dealings with the property, a history of those dealings must be made, in the form of an abstract of title, on the occasion of every succeeding sale or mortgage.

15. That history must on every such occasion be investigated and put to the proof.

16. Thus the former dealings with the land, however transitory their object, produce a permanent and an injurious effect upon the title, whether they result in conferring a good title or not. The transactions which enter into the history of the title, though spent and determined according to their own proper intention and effect, yet fasten themselves upon the ownership, and continue vital and operative to the extent of obliging every person dealing with the land to see and take care that they are in fact spent, and have done their work.

17. Historical recitals of the previous title become necessary in the deeds executed on the transfer of landed property. These greatly lengthen the deeds, and are the occasion of constantly increasing expense in the future deduction of the title and dealings with the property.

18. Special and restrictive conditions of sale become necessary in order to preclude objections by the buyer, which this retrospective investigation of the title may enable or entitle him to make; and a practice ensues of framing conditions of sale, which, in order not to depreciate the interests of the seller, or injure his sale, are so disguised as often to entrap the unlearned or unwary buyer.

19. The danger of contracting to buy land without a previous knowledge of the title is thus perceived by prudent and cautious buyers, and persons become unwilling to bind themselves as they ought by contract, or until after they have seen the abstract of title.

20. Where a contract is in fact duly entered into, the investigation of the title often causes, not expense only, but delay, annoyance, and disappointment, sickening to both buyer and seller. The seller does not receive his money, nor the buyer his land, until the advantage or the pleasure of the bargain is lost or has passed away.

21. The existence (*a*) of technical defects in titles substantially good places an undue amount of power (as has been well said) in the hands of an unscrupulous purchaser. The proceedings towards the completion of a sale, after the contract is made, necessarily occupy a considerable time; during which the purchaser has an opportunity of ascertaining, from the state and changes of the markets, whether his purchase is likely to prove a good speculation or the reverse; and his acceptance or refusal of the title is often unduly influenced by considerations arising from these circumstances.

22. Thus, finally, from these various causes the sale and transfer of land are impeded, and dealings in it are discouraged. (*b*)

(*a*) Mr. Commissioner Hargreave's evidence.

(*b*) It is well observed by the Real Property Commissioners, in their Second Report, that "the great difficulties which occur in selling estates and obtaining money on real security, the "time which usually elapses before the completion of such transactions, and the harassing "expenses and disappointments which attend them, are evils universally acknowledged. They "are by many persons considered the greatest evils belonging to our law of real property. We "believe it may be confidently asserted, that of the real property of England a very consider-"rable portion is in one of these two predicaments—either the want of security against the "existence of latent deeds renders actually unsafe a title which is yet marketable, or the want "of means of procuring the formal requisites of title renders unmarketable a title which is substan-"tially safe." The Commissioners also allude to "the depreciation of real property occasioned by "the general feeling of the present insecurity of title, and by the apprehension of the delay and "expense attending transactions relating to real property;" and observe that "it is obvious "that by removing them a register would have a tendency to increase the value of estates, and "diminish the rate of interest upon mortgages."

XIII. From what has been said, we think it may be concluded, that the great objects which the reform of this branch of the law ought to have in view range under the following heads; viz.:— Objects which it is desirable to effect.

1. Security of title.
2. Simplification of the title.
3. A record of the actual ownership.
4. Simplification of the forms of conveyance and general facility of transfer.

We do not conceive, indeed, that it is necessarily an objection to any proposition for a system of registration, that it is not adapted to accomplish all these objects. It may be sufficient for us to say, that if different systems of registration be proposed for consideration, that system which is found to secure these objects in the fullest extent will best serve the interests of landowners and the public generally, and furnish the surest remedy for the evils out of which the demand for a registry of assurances arose.

XIV. That a Register of Assurances would give increased security of title, we see no reason to doubt. All those evils and objections which call for protection against the suppression of documentary evidence of title, would, we think, be removed or remedied by a general register of deeds and other assurances relating to land. Advantages of a Registration of Assurances.

Registration of assurances has been justly said (*a*) to be a system which would protect every man against the ordinary accidents to which deeds and instruments are subject, and would afford a perfect substitute for covenants for production, where (as in the great majority of purchases is the case) a purchaser cannot obtain the deeds; and thus owners of estates would no longer, as to these matters, be in the situation in which they frequently are placed, of utter inability to offer their estates for sale, except clogged with conditions which must necessarily prejudice the sale. One of the most common objections occurring in titles arises from the discovery, pending the investigation, that other deeds besides those which are in the vendor's possession or power relate to the title. If the purchaser cannot obtain access to these deeds, and a binding covenant for the production of them (however unimportant they may be), he will not be compelled to complete the purchase.

Registration of assurances, it has also been justly contended, would afford an effectual protection against deeds or instruments, of which a purchaser or mortgagee may not have notice, and against which, unless he obtains the legal estate,—the *tabula in naufragio*,—(of the possession of which, by the way, he can have no confident assurance), he cannot protect himself. It would also disable parties from suppressing family and other deeds of which no general notoriety exists, and which are in the custody of persons having only a limited interest in the estates.

In a few words, the result is, that a system of registration of assurances would afford protection and security to those who are equitably entitled to it, and would check fraud and dishonesty. The effect of registration of assurances would, we may admit, as respects these circumstances, be beneficial, as well to the proprietors of real property as to the community.

XV. If, therefore, there were no other objects to be accomplished than security of title and protection against fraud, or if there were no system which would reach the other objects in view, a Register of Assurances would be a valuable measure; though, even so viewed, it might happen that incidental inconveniences would arise to counterbalance such benefits. We shall, in fact, have occasion presently to consider whether many and considerable objections

(*a*) Mr. R. Walters' evidence, 2 Re. Pr. Com. Rep., App., p. 131.

would not attend a system of registration of assurances, even assuming it to ensure all the requisite security of title.

What, Registration of Assurances will not effect.

XVI. It is first, however, material to observe that a register of assurances would not of itself, as we conceive, operate to simplify title, or facilitate (as respects the title) the transfer of land, or render less intricate the practice of conveyancing, or lessen any of the burdens on land which arise from those peculiarities in the ownership of land to which we have above adverted.

The registration of assurances would not, as we think, render unnecessary the retrospective investigation of the title on the occasion of each succeeding sale or mortgage. The effect of past dealings upon the title to the land would remain the same as at present. No evidence of the ownership would be afforded without examining the former transactions, as is now done. Abstracts of title would not be shortened. The forms of conveyance would not be simplified.

The technicalities and anomalies of the law of real property would, we think, be confirmed, rather than lessened or relieved, by registration of assurances, unaccompanied by alterations in the general law. Those embarrassments and impediments in the sale and transfer of land which arise from the state of the law and the mode of showing title to land would remain as before, if indeed the delay, trouble, and expense in transferring land would not be increased rather than diminished by the establishment of a Register of Assurances. A brief consideration of the positive objections that have been taken to that scheme is calculated, we think, to show that this would be the case.

First objection to a Registration of Assurances considered.

XVII. One of the most prominent objections to registration of assurances, is the vast bulk and increasing quantity of deeds and instruments which would have to be kept, and, on transfers, to be searched and examined. (*a*) It is calculated by solicitors that these instruments would accumulate at the rate of 300,000 annually, requiring a registry of about 1,000 a day for every working day. The inconvenience of this, as well as the cost, would be so great, and it struck so forcibly the Commissioners who reported in 1850, that they endeavoured to get rid of the objection by allowing protection in a variety of instances to unregistered assurances. After observing that in one aspect it would seem necessary to the perfection of a register that the registration should be as essential as any other solemnity required to the execution of a deed, the Commissioners in their Report remark, "But (*b*) we believe "that the establishment of such a rule would lead to consequences seriously "affecting the practical utility of registration. One great difficulty in the "way of the establishment of a register has always been, the bulk of written "instruments which are forced upon the attention of purchasers. If registration were made imperative, this evil would become very formidable. "After careful consideration we see no sufficient reason for denying to an "unregistered assurance an effect which is not incompatible with the protection to be afforded by the register to those who seek such protection. An "unregistered deed may be safely allowed to have its full effect against all "persons except purchasers claiming the protection of the register." A stronger proof of the magnitude of the evil arising from an indefinite accumulation of deeds can hardly be adduced, for the remedy proposed amounts to this, that in establishing a registry of deeds one of the principal advantages intended to be derived from it, namely, the certainty of always being able to ascertain the instruments which by possibility can affect the land, may be

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(*a*) Lord St. Leonards' Pamphlet, "Shall we register our Deeds?" p. 4. (*b*) Page 28.

withheld, except as against persons who have chosen to claim the protection of registration.

Second objection considered.

XVIII. In the second place, the registration of assurances would involve a specific addition to the existing burdens on the transfer of land, without diminishing, as we think, except remotely and casually, any of the existing causes of expense, tardiness, and difficulty in such transfer. The cost of the necessary searches, and the delay and impediments they will occasion in completing sales are not to be overlooked, if no substantial compensation be afforded by diminishing or removing other causes of expense and embarrassment. The complexities of title and the technicalities of transfer, which are at present the chief causes of cost and difficulty, and protracted inquiries in performing contracts of sale, will not be taken away by any system of registering deeds. To this we must add the important consideration that the additional expense and complication caused by requiring registration would be universal, and would extend to all landed property, and to all sales and purchases of it, large or small. The benefit, however, which the register would confer by excluding the risk of fraud would be exceptional and peculiar. All transactions would, in fact, be made to pay for the machinery contrived to defeat fraud in a few. Were the register calculated to simplify title generally, or the forms of transfer generally, or were it adapted to relieve sellers and buyers from the necessity of retrospectively investigating past titles, the benefit to landed property, and to commerce in it, would be universal, or substantially so; and in such a state of things there would be no harshness in throwing upon all transactions the cost and burden of coming and being admitted to the register. Unless, however, the investigation of the title retrospectively can be dispensed with, the main sources of expense will remain untouched. The expense of this investigation amounts certainly to one third and often to two thirds of the whole cost incurred by a purchaser.(*a*) We cannot, therefore, but concur in the opinion expressed by Mr. Hayes, that by "establishing a general register "there is an absolute certainty of an immediate addition to the expense of "every transaction relating to land, and the risk of involving titles at an early "period in almost irretrievable embarrassment, while all the advantages which "it tenders are more or less speculative and remote." In small transactions, which are far the most numerous, any increase of expense would be very oppressive. (*b*) An account of a purchaser's legal expenses incurred at various times and in different parts of the country has been furnished by one of the witnesses. (*c*) It gives an average of two and a half per cent. on the purchase money, or five times the ad valorem stamp duty. But as an average affords no notion of the heavy burden in individual cases, it is necessary to look at the smaller properties; it will there be found that the expenses of the purchase mount up to ten, twenty, and even twenty-three per cent. Make even a slight addition to these expenses, and then a register, which is intended for the benefit of sellers and purchasers, would be the occasion of actual loss to the great mass of the persons interested. The Select Committee of the House of Commons in 1832 were so strongly impressed with this result, that when they considered that a general register of deeds and instruments would be of decided advantage to large purchases, they only recommended it as regards small purchases, upon the ground that such a measure "would be made most perfect by "being

(*a*) See the answers of Messrs. Hurst, Lewis, Statham, Shaen, Sweet, Christie, Farrer, Dugmore, &c

(*b*) See answers to Question 2. See also Mr. Bullar's Evidence on Registration of Assurances Bill in answer to Question 685, &c.

(*c*) See Mr. Sweet's answers to written questions.

made applicable to all lands without reference to their value." We cannot think it right to do an injustice to a large body of people merely for the sake of obtaining uniformity, which is miscalled perfection. Such perfection would operate unfairly on small proprietors, and, as Lord St. Leonards has well observed, " probably it would induce them not to resort to the register at all, " and then they would be exposed to evils to which they are not now liable ; " for if the rate of insurance be too high, the mariner prefers encountering the " perils of the sea."

Third objection considered.

XIX. Increased complication is a third objection to a general system of registering assurances. If any of the instruments affecting the title are withheld from the register, then the system becomes imperfect. If memorials only are registered, the original instruments of which the memorials are given must be searched for, and copied, or abstracted; and if the instruments are once registered, they must remain on the register. However occasional or however temporary their object, they cannot be destroyed; whether satisfied or not they must still be kept, and being kept they must all be examined by purchasers. Thus the machinery would be too complicated to answer its purpose, and complication would diminish the facilities of transfer, and increase the chances of miscarriage. Simplicity and accuracy are the grand objects to be attained. The absence of these must lead to uncertainty, and uncertainty is insecurity, and insecurity is impediment. But how are simplicity and accuracy to be attained if notice of deeds by the fact of their being registered is to be multiplied and perpetuated? Extinct life estates, and charges or incumbrances which have been satisfied or exhausted, and other interests which have ceased to be of real importance to the title, must more or less form part of the abstract, and the purchaser's solicitor would not be justified in disregarding them.

Fourth objection considered.

XX. Another objection raised to a general registration of assurances is the fear of unnecessary and uncalled-for disclosures.(*a*) No man likes to make his private affairs public; and one man has no right to pry into the affairs of another, except for some object, in which the latter has given him an interest. Now the only legitimate object of making public or giving notoriety to any title-deeds is to prevent frauds in the transfer of property by ensuring notice to future contractors of all transactions which are to affect them. For that purpose, however, there can be no need of disclosing the whole internal history of the title for an indefinite period. There can be no reason why every particular, however secret or however confidential, should be made known. Why are the trusts which affect an estate in land to be more divulged than the trusts which affect stock or railway debentures? Why are settlements and family arrangements, which are intended to preserve property in families, to be more liable to exposure in the one case than they are in the other? These and similar questions have often been asked, but they have never received a satisfactory answer. The objection is striking; and the force of it constrained the Real Property Commissioners in 1832 to suggest(*b*) that in many cases, such as that of an appointment of a reversionary interest, or of portions in favour of children, the registration might be safely delayed; and that any provision which it might be desirable to conceal might be made by vesting an interest in trustees in whom confidence could be reposed. They added, moreover, that the peril would be no greater than exists in all settlements of money in the funds, and in many other cases in which trusts are not

(*a*) See Lord St. Leonards' Pamphlet, pp. 12, 13.
(*b*) See Second Report on Law of Real Property, p. 23.

expressed in the instruments by which the property is vested in the trustees. Such suggestions are by no means unimportant. They show, that in cases like those pointed out the Commissioners considered that the difficulty of establishing a registration of assurances would be so great that they were prepared to substitute for it what in fact in the particular case amounted to a registration of title; but if a registration of title would be good for settlements, why would it not be equally good for mortgages and purchases? If requisite for the one, why not for the other? If the analogy from the funds is available for determining the mode of registration in some cases, why not in all? The dread of disclosure can hardly constitute a just distinction between mortgages and settlements; for the danger of disclosures affecting credit would probably be as great as the dangers of disclosures affecting settlements and family arrangements. Nor do we think that there is any inconsistency in attributing weight to this objection, and at the same time regarding as an evil the disuse or loss of that system of public transfer of land which in a previous part of this report we have adverted to as having prevailed in the earlier periods of our history.

Fifth objection considered.

XXI. Another objection to a registration of assurances would be, the enhanced difficulty of obtaining loans by a deposit of deeds. The transactions of this kind are very numerous. At present a respectable man in possession of title-deeds may and does obtain relief in sudden emergencies confidentially, easily, and at a few hours' notice. But if a registry of assurances were the only means of establishing title, and if this title could no longer be evidenced, even *primâ facie*, by the possession of deeds, transactions by deposit of deeds would be seriously impeded. The knowledge of such deposits, ascertained by publication through a general register, would be repugnant to the feelings of most depositors, and the process of search and consequent delay would stop or limit this species of dealing just at the time when facility and dispatch are the chief things needed. These are results which cannot be contemplated in a great commercial country without apprehension and alarm. And we may confidently conclude, that any system of registration which did not provide for arrangements equal in convenience to the deposit of deeds would fail to meet with general acceptance. To obviate this objection as much as possible, the principal Bills of late years introduced for the Registration of Assurances directed certificates of registration to be granted. Upon the faith of these it was supposed that parties could obtain loans in the same way as they can now obtain them on the deposit of deeds. But we doubt whether the same confidence would be given to such certificates as that which is given to the deeds themselves, unless they were considered, not only as certificates of the fact of registration, but also as certificates of the fact of ownership. In the latter case, however, it is perfectly evident that the register would become a register of title rather than a register of instruments and assurances.

Sixth objection considered.

XXII. Another objection to registration of assurances is, that it would tend to render less secure possessory titles,—those titles, namely, which depend more upon the fact of quiet and long-continued enjoyment than the technical sufficiency and accuracy of the various deeds which may have contributed to form the stages and steps of the title. The evidence of defects and slips in limitations and conveyances would by the register be perpetuated; and that possession, which might have continued undisturbed if the possessor had been allowed to keep his deeds in his box, would be made to invite criticism and attack by presenting a public record of some frailty by which, or notwithstanding which, historically, the possession might have been acquired.

Seventh objection considered.

XXIII. Lastly, we are not satisfied that any mode of classification of deeds or of titles, for the purpose of furnishing the requisite indexes to a register of deeds, and affording the necessary facilities for search, has been or can be devised so as to be sufficiently free from complication. Without the means of ready, accurate, and complete searches, a system of registering deeds would only be a snare to purchasers. It cannot be doubted, we think, that everything has been done which learning and ingenuity could devise, towards providing efficient and complete indexes, in the Reports of the Real Property Commission and the Commission on Registration and Conveyancing. But we concur in thinking (*a*) that the system of classification adopted by those Commissions mixes up the technicalities of the law of real property with the process of registration in a greater degree than would be compatible with the objects now generally sought to be attained by registration.

Yorkshire and Middlesex Registers.

XXIV. We have not overlooked the fact that the local registers of Yorkshire and Middlesex (as remarked by the Real Property Commissioners (*b*)) " are generally considered to be, on the whole, productive of good, and that " no attempt has been made to abolish them.

As, however, these local registers have furnished a lengthened experience on the subject of the registration of deeds, we think it not unimportant to remark that they do not afford any answer to the observations we have found it necessary to make as to the insufficiency of a registry of assurances for removing the existing impediments to the free transfer of land, or as to the positive objections which may be opposed to the institution of such a registry.

Objections to them considered.

1. In the first place, these registers are signally defective, in not presenting at one view all the documentary evidence which a party investigating a title may have occasion to see. There is no guide to the searches which on a sale ought to be made in the register, except a previous investigation of the documents which may happen to be included in the vendor's abstract of title. When the names of former grantors or owners of the land have been ascertained from the documents to which the purchaser obtains access, then (but not till then) he can search the register in the names of those former owners for any assurances which may have been executed by them. These searches must be repeated in new names, as new light is from time to time thrown upon the title; whereas a register of deeds, in our opinion, ought itself to furnish consecutive information of the dealings with the land which have taken place, when once a reference to the proper head in the index has been obtained. The defects of the existing registers in this respect are pointed out by the Real Property Commissioners (*c*), and we concur in their opinion.

(*a*) See Humphrey on Registration of Assurances Bill.

(*b*) 2 Rep. p. 19.

(*c*) " We may here mention as an important inconvenience belonging to the existing registers, " and from which a system founded on classification would be exempt, that where registered " deeds are indexed by names several searches of the register at successive times are often neces- " sary. The deeds produced to a purchaser indicate the searches required so far only as the " title is shown by those deeds. It is obvious, that every document relating to the title must " have been under consideration before the extent of the searches required can be ascertained, " and that frequently searches will become necessary with reference to interests which are brought " into view by the result of a former search. The consequence is, that in almost every case " something is left undone; the purchaser, to escape from inquiries so indeterminate, foregoing " the protection which the register would have afforded him. But if the deeds relating to a " particular title are brought together in the index, a reference to the class enables the pur- " chaser to ascertain at once whether all the documentary evidence has been produced to him, " and to call for any instruments which may appear by the register to be wanting." And " again,—

" The purpose of a repertory of documents of title is not answered, in a perfect manner, " by any of the existing registers in this country. Whenever the ownership of lands is shown

2. These Registers do not, as we have already observed, contain an inrolment of the deeds, but memorials of them only; and these memorials are not required to show more than the names of the parties, and the property affected.

3. In the next place, these registers do not confer a title according to priority of registration, so as to make it indifferent whether the registered deed confers a legal or an equitable estate, or so as to protect the sale of an equitable estate from the infirmities and risks we have already noticed as rendering it practically an unmarketable interest. A subsequent equitable right may obtain precedence over a prior registered right, by tacking to it a legal right prior to the former on the register. (*a*)

4. The objectionable tendency of the rule lastly stated is enlarged by a general doctrine long since settled, that registration is not notice, either actual or constructive, of the deed registered.

5. On the other hand, the efficiency and value of the register are impaired by a general doctrine, that express notice of an unregistered deed is equivalent to the registration of it. A purchase deed brought to the register, with notice of a prior deed kept off the register, is postponed to the prior deed, although the person claiming under such prior deed has (purposely it may be) disregarded the provisions of the Register Act in not bringing his deed to the register. Thus, from the combined effect of the rules which postpone registered deeds to what may not be on the register, and do not secure priority in all cases to registered deeds over what may come after them on the register, the systems of registry in Yorkshire and Middlesex fail in fulfilling many of the most important offices of a registration of deeds.

In all the particulars which we have here pointed out, the defects and errors of the local registers were proposed to be remedied or removed in the scheme for the registration of assurances which was last submitted to Parliament. It is plain, then, that the existing registries of Middlesex and Yorkshire do not furnish any evidence in answer to the observations we have already made on the deficiencies and the objectionable operation of registration of assurances in general. In those observations we have assumed the system to be free from the objections in the local registers which we have here noticed; and we may add that most though not all of the above remarks upon the local registries of Middlesex and Yorkshire are applicable to the general register of deeds in Ireland.

As to Registration of Title. Various Plans proposed. Objections thereto.

Registration of title suggested instead of Registration of Assurances.

XXV. Having regard to the many and great objections to a registration of assurances which we have considered, we cannot be surprised at the growing conviction that a measure of that description will not be adequate to answer the purposes for which registration is required. The unmanageable accumulation of deeds and instruments in one place; the certainty of an immediate addition to the expense and delay of every transaction relating to land; the risk of involving titles at no distant period in increased complication and

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" by a deed to which the purchaser has access, a search may be made for conveyances or charges " by the grantor and grantee in that deed. Whether in any particular case the search can be " continued downwards, so as to get at the whole of the subsequent evidence of title, must depend " upon what may be disclosed by the memorials of the respective deeds to which a reference " has been obtained by the previous search; and although there would always be the means " of ascertaining the subsequently registered title, if registration at length or a deposit of " the deed were substituted for the memorial required by the existing registers, it is obvious that " a register, framed upon the principle of indexes by the names of parties, could never be " relied on for the discovery of the title anterior to the earliest deed to which the purchaser may " have access."

(*a*) 2 Re. Pr. Com. Rep. p. 35.

embarrassment; the apprehension of disclosures, especially in cases of private settlements and family arrangements; and the diminished opportunities of obtaining loans on the security of the land for occasional purposes; the risk of disturbing possessory titles; and the complication of indexes, have naturally induced the distrust of a scheme, the supposed advantages of which, as an additional safeguard and security to titles, are more or less speculative or remote. Even those advantages are much exaggerated, while the positive objections are certain and immediate. The main desiderata to which attention is most anxiously directed are not so much security of title (for that, in fact, is to a great extent practically obtained), but the simplification of title, facility of transfer, simplicity of form, and the consequent diminution of delay and expense. To obtain these desiderata a registration of title is the remedy proposed; and several plans for accomplishing that object have been submitted to us. We propose to consider them in due order.

Plans proposed.

First Plan.

XXVI. The first of these plans (*a*) proposes the establishment of a Land Tribunal, to which owners of land (including tenants for life and in tail, as well as in fee) may apply to have the land placed upon a public register, and declared to be registered land. The Tribunal is to inquire into the nature of the applicant's title to the land and its existing circumstances, so as to decide upon the expediency of simply admitting it upon the register. When the land has thus become registered, no subsequent act is to create any new estate less than a fee simple, except registered leases or easements; nor any new incumbrance, except registered debentures to a limited amount.

The plan also proposes that the owner of such registered land may further apply for a full investigation of title, and for an order declaring, in a conclusive form, all existing estates and incumbrances; and that after the making of such order the Tribunal may give to each person so found to be interested a Certificate of his Title. It is also suggested, that, in order to obviate all chance of any injustice to third parties, the State may guarantee the title, upon payment of such small fees or premiums of insurance as will provide an indemnity fund to compensate persons whose prior rights might be superseded; but this guarantee is not an essential portion of the plan.

The privileges considered to be incident to this plan are,—

1.—A Parliamentary or indefeasible title, when conclusively declared by the Tribunal;

2.—A power to transfer by simple entry the registered land;

3.—A further power to obtain on its credit terminable land debentures, transferable either by simple entry like Government Stock, or by simple delivery like bank notes or bills of exchange.

With a view to impart to these debentures an immediate marketable currency, and consequent increase in value, their amount is to be limited,—say, for example, to ten times the annual value of the land; and they are to be for uniform sums, without priority *inter se*, and bearing a similar rate of interest. The leading object of these debentures is to avoid the existing complexity of incumbrances, and gradually to supersede all other kinds of charge, such as mortgages, legacies, family portions, quit rents, tithe rentcharges, annuities, judgments, recognizances, crown bonds, decrees, orders, and rules of court.

As to family settlements and trusts, it is suggested that they might still be sufficiently effectuated (like settlements of Government stock or of railway shares) through personal confidences, and the equitable jurisdiction of the Land

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(*a*) See Mr. Scully's plan with the Bill annexed in Appendix A.

Tribunal; also that equitable mortgages or loans from bankers might be effected easily and without expense. The plan further recommends that the new system should be introduced gradually and in a voluntary form; though, after some years experience of its beneficial working, it might be considered expedient to render its application universal as to all land not specially exempted from its operation.

The professed principle of the whole plan is to facilitate the sale and transfer of land, through the most simple machinery for the registration of an absolute title, both to the land itself and to the charges upon land; with a subsequent capacity in the owner of any registered land or charge to transfer the former by entry, the latter by entry or delivery.

XXVII. Such being the general outline of this plan, we have to observe, that it has unquestionably the merit of great simplicity, and it contains valuable suggestions of which we propose to avail ourselves. Its contemplated advantages are in a great degree based upon those already derived from the Incumbered Estates Court in Ireland, and indeed it was framed for that part of the United Kingdom, though it is said to be capable of easy adaptation to any English measure of land reform. Ireland possesses superior machinery for carrying into immediate operation a complete system of Registration of Title through its Registry of Deeds, its Ordnance survey, and its General Valuation of lands.

Objections to first plan. Land Tribunal.

The conclusion to which we have come is adverse to the institution of a Land Tribunal,(*a*) with judicial powers to decide conclusively upon all titles to land. Such a Court may advantageously be established where estates generally are so heavily encumbered that their owners can neither emancipate themselves from existing burdens, nor discharge the duties which attach to the ownership of land. The object in that case is to obtain altogether a new proprietary, and to provide for payment of debts; but the same principle is hardly applicable in a state of society where there is no paramount need of encouraging absolute changes of ownership, as contradistinguished from temporary charges or family settlements, and where a considerable portion of the property will, not improbably, whatever may be the state of the law, still remain in the same families.

Objections continued.

XXVIII. Another objection to this plan is, the want of provisions for protecting beneficial and equitable interests. Without such provisions those who are entitled to beneficial interests in the registered land would not feel satisfied of having adequate protection against the wrongful acts of the registered owners.

Land Debentures.

XXIX. With regard to the proposed system of debentures, we conceive that it is not within the range of the inquiry submitted to us, and therefore we do not recommend it. We may observe that we are not prepared to concur in recommending that the owner of registered land shall be deprived of his legal power to incumber his own land, with the same kinds of charge as he can create at present. Furthermore we may observe that if it would not be advisable to establish a Land Tribunal for the purpose of investigating the title to land, the same objection would also apply to the establishment of such a tribunal for the creation and issue of land debentures. Moreover, there is not in England any adequate machinery for ascertaining judicially the value of land through a public map or general valuation, such as exists in Ireland. The preferable way of enabling persons readily to obtain loans on the security of land, is to alter the expensive forms and incidents of mortgages,

(*a*) Mr. Scully retains his preference for the Land Tribunal and Land Debentures proposed by his plan in Appendix A. See his paper at the end of this Report.

so that they may be at law what they are in equity, securities merely; and that thus the dry legal estate may not be left outstanding on payment of the money secured, but that the mortgage may then cease for ever. A statutory enactment giving that effect to mortgages, and conferring all the powers which a mortgagee now usually possesses under distinct provisions against the mortgagor, or the mortgagor's property, coupled with a registration of the charge as well as of the land, might probably be framed so as to give to charges on land the same advantages and the same facilities of transfer as those which attach to railway debentures.

Although we do not recommend the adoption of a judicial system of land debentures, we think it right to observe that there may be facilities for trying it in a proper manner in Ireland, where strong opinions have been expressed in its favour (*a*).

Warranty of title.

XXX. The suggestion of a guarantee or warranty of title, supported as it has been from many quarters, is not peculiar to the plan now under consideration, and is in our opinion very valuable. It is well known that when a title has once been investigated and approved of by experienced counsel and solicitors, it is as little likely to be questioned as the right to any chattel which a man buys in open market. Still on a re-sale it is again investigated and again approved by another counsel and another solicitor, because the new purchaser was no party to the former transaction, and he cannot be sure that everything has been done which he may think necessary to make himself safe. But should the second purchaser be a member of the family instead of a stranger, employing and taking the same legal advice, it is probable that he would be satisfied with the previous investigation, instead of requiring a new one to be instituted, which he would deem to be only going over the same ground again. Supposing, therefore, that a public officer, such as a registrar, should have the power, on application made for that purpose by proper parties, to direct that the title, before registration, should be examined and tested under the authority of a counsel and solicitor, he might safely guarantee it, on their recommendation, against all claims which could be brought against it. In such a case it would not be unreasonable that the registered owner who had thus obtained a warranted title should pay a small premium on that account; and the aggregate amount of the premiums paid would constitute a fund to indemnify the State as the public insurer in case any latent claim should be subsequently established.

Second Plan.

XXXI. The second plan (*b*) which has been submitted to us is founded on a principle which was brought to the notice of the Registration and Conveyancing Commissioners. It has been described, in a word, as Registration of the Freehold. This plan proceeds on the hypothesis that possession is the root of title; bearing in mind that by possession the possession of the freehold is meant, and by freehold a presumptive fee simple. Credit, therefore, is given to possession until it is shown to be wrongful. The fact, that the property is held by the person who is seen to hold it, is presumed to be coincident with the right of property, until the contrary appears. Acting on this hypothesis, the freeholder as thus defined is always to be entitled to have his property registered. But since there may be other rights besides the free-

(*a*) See Evidence of Commissioners Longfield and Hargreave, Master Brooke, Sir M. Barrington, Lord Dunalley, Colonel Larcom, Mr. Griffith, LL.D., Sir R. Kane, Mr. Pollard Urquhart, M.P., Mr. Sausse, Q.C., Mr. R. Longfield, Q.C., Mr. J. B. Murphy, and Mr. R. W. White; also a Petition from Irish Landowners in May 1850.

(*b*) See Mr. Wilson's plan in Appendix A.

holder's, these rights are to be dealt with as qualifications of the freeholder's presumptive title; for the possession is not necessarily the whole of the evidence upon which the title rests; it should rather be considered as the basis of the evidence, or, as it were, the starting point of the inquiry. When, therefore, other rights exist, protection is to be given to them, and they are to be capable of registration under the heads of "Charges and Notices." Registration of charges and notices is to consist, in effect, of the registration of written instruments or assurances; but each instrument or assurance is to stand upon the register in the name of a person responsible for its introduction into or retention in the registered title, and empowered to remove it at pleasure; and provision is to be made for its compulsory removal from the title, as soon as its operation has ceased. The registration of the freehold is to be provisional in the first instance, that time may be allowed—say six years ordinarily, but a longer period, perhaps twenty years, for those who are under disabilities—to interpose the registration of existing incumbrances or adverse titles. It is further proposed that a map of all the land in the kingdom, divided into parishes or districts, should be made by authority, on which each field or other materially defined portion of the surface of the country should be distinguished by a numerical symbol. This map is to be made the basis of a book of reference containing the same numbers as those on the map, with the description and contents of each division, and the names and addresses of the different freeholders. The register at the outset would be formed on the spot by an assistant registrar or commissioner sent down to the different parishes for the purpose of receiving claims; and the assistant registrar would in substance follow the practice prescribed by the General Inclosure Act, 8 & 9 Vict. c. 118., a limited time being allowed for appeals, with an extension of time in favour of persons under disabilities.

XXXII. This second plan is explained in detail in the Appendix. It contains suggestions of which we shall avail ourselves hereafter; but in the view of the majority of this Commission there are grave objections to it; and unless those objections could be overcome or materially lessened we should not feel ourselves justified in recommending it.

Objections to the second plan considered.

XXXIII. One serious objection is the necessity of sending a commission into every district to ascertain who are to be put on the register of the lands in that district,—an objection not merely or mainly on the score of expense, but to the principle of such an inquiry. It would, in fact, involve a compulsory registration of title; for a landowner could not venture to remain passive, lest some one else should procure registration to his prejudice. The presumptive completeness attributed to the freehold title would also tend to stir up dormant claims which might otherwise be settled by mere lapse of time. In the next place, the right which under such a system every freeholder would have to register his freehold, as implying, in the absence of or subject to registered qualifications, a power to transfer the fee simple to a *bonâ fide* purchaser for valuable consideration, would confer on a person with a limited interest a power which he does not and ought not to possess. The consequence must be, that claims without number would be sent in to the registrar; for the presumptive right which the freeholder might acquire would otherwise destroy the actual rights which the remaindermen, or those who have interests in the property, are justly entitled to. In the next place, the facility with which claims might be made and allowed would lead to the introduction of a mass of documents,—some real, some doubtful, some fictitious,—which would have to be searched for, examined, and got rid of, before a purchaser could be advised to accept the registered title; and thus the evils already pointed

out (*a*) as necessary incidents to a registration of assurances would here arise, and we do not see how they could well be avoided. Again, since all interests, other than that of the registered owner for the time being, are by this plan remitted to the head of "Charges and Notices," it would often be ambiguous what extent of interest ought to be considered as represented by the registered ownership. In some cases the "claims" may be merely illusory, and in others they may relate to interests certain to take effect (at a future period). The certificate of ownership, however, would be delusive, if it were not certain what measure of interest it represented, because the ownership would appear to be the fee, and yet might, in truth, be no more than a life interest. On the other hand, the proposed circulation of certificates of registered "claims" might lead to fraud when the claim covered merely an imaginary, a litigated, or a doubtful interest. Once more, the sale of lands by registered owners would, during the period of provisional registration contemplated by this plan, be almost prohibited, inasmuch as, until the expiration of that period, modifications and limitations might be put upon the register in the shape of "claims." Assuming, however, that these objections could be more or less overcome, still there would be the difficulty, the expense, and the delay of mapping the whole country, of settling the questions of disputed boundaries, of correcting errors which would constantly creep in, and of revising the map from time to time so as to make it correspond with the changes, in the various alterations and subdivisions of property, which would constantly take place.

Maps.

XXXIV. The importance of maps as forming the best basis for a scheme of registration has been long and often and ably discussed. In 1832 the Real Property Commissioners (*b*) reported against such a use of maps. In 1850 the Registration Commissioners reported (*c*) in favour of it; but two of that body, Mr. Humphry and Mr. Broderip, expressed their dissent. In 1850 a Bill for the Registration of Assurances, founded on the report of the last-mentioned Commissioners, which recommended maps, was brought into the House of Lords, and referred to a Select Committee. The Select Committee, admitting that maps were in theory to be preferred, came at length to the conclusion that, considering the occasional inaccuracy of the Tithe maps, the insufficient scale of the then existing Ordnance maps, and the great delay and expense of a new survey, it would be inexpedient to propose their compulsory adoption in the first instance, but that means should be reserved of introducing them as opportunity occurred. The Bill, in consequence, came down to the House of Commons without that portion of it which was founded on the recommendation of maps by the Commissioners. In the House of Commons the question was slightly reopened (*d*) in 1851, but no opinion was expressed. Under these circumstances we have felt it our duty to take further evidence on it; and we have arrived at the conclusion that a compulsory plan for mapping the whole country would not be attended with sufficient advantages to outweigh the inconveniences which must necessarily attend it. The first inconvenience would be the unavoidable delay that must occur in remapping the kingdom. There are no public maps now in existence which would be sufficient to answer all the purposes of registration. (*e*) The present scale of the Ordnance

(*a*) See Sections XVII. to XXIII.

(*b*) See 2nd Rep. p. 26.

(*c*) See the Report of the Registration and Conveyancing Commissioners, p. 15.

(*d*) See Mr. Bullar's and Mr. Coulson's evidence, 692–694, 1000–7, 1073–75, before Committee of House of Commons.

(*e*) It should be remarked that this reasoning is applicable chiefly to England. In Ireland the Ordnance map on the scale of six inches to the mile is sufficient for the purposes of registration. See the evidence of Colonel Larcom, Mr. Griffith, Sir M. Barrington, Sir R. Kane, Mr. Brassington, and Mr. R. W. White.

maps in England would not be large enough for minute subdivisions of common fields, and for a clear delineation of town districts. The tithe maps would determine the question of parochial boundaries, but not the boundaries of individual proprietors. Such maps might certainly be useful to a considerable extent; but for registration purposes there must be new surveys; the revision of existing maps must be made, and it would probably require two years before the map for any one county could be got ready. Again, the expense would be very considerable. Mr. Blamire says (*a*) that the maps and references in the Tithe Office have already cost as much as 2,500,000*l.*; and Colonel Dawson (*b*) estimates at upwards of a million, the cost of compiling a map of the entire kingdom partly from maps scientifically constructed, and partly from the revision of other maps to be adopted for the purposes of registration. And this would be independent of the expense which would have to be incurred in settling the boundaries between different proprietors, if such a measure were considered desirable. It appears to us, however, that to compel the formation of a general map of England with the view of making it evidence of the boundaries of properties, would of necessity open a vast field for litigation and dispute. Questions of disputed boundaries which are now allowed to remain in abeyance must then be settled. The trouble and annoyance thereby occasioned would be harassing in the extreme; and these evils would fall more heavily on small owners than on large proprietors. Every person must defend his extreme rights, for when once the register came into operation, they would be barred for ever. To meet so many and such serious inconveniences, the corresponding advantages should be clear and positive, certain and immediate; but we doubt very much whether this would be the case under a compulsory obligation to map the boundaries of every proprietor.

Maps continued.

XXXV. For the reasons before mentioned we cannot recommend that the compulsory formation of a general map should constitute the basis of a system of registration of title. At the same time we are not insensible to the numerous advantages which a pictorial representation of property and its boundaries must always have as compared with a mere verbal description of it. (*c*) The verbal description can only state that it contains so many acres, roods, and perches; that it bears such and such names; that it is occupied by this or that tenant; and that it is bounded on the north, south, east, and west by certain specified roads, rivers, buildings, or lands belonging to or in the occupation of certain specified parties. But such a description is not necessarily sufficient to identify the property, or to ascertain correctly its form or shape, or whether the fences or boundary lines are crooked or straight, or to determine what is the general or particular direction of it with regard to the points of the compass. These are matters which a map, constructed upon a basis of triangulation, and according to the principles of science, can best supply as permanent landmarks, accurate at the time when they are originally made, and capable of being restored to their true positions, whatever may be the casual or accidental circumstances by which they may have been disturbed. Although, therefore, for the reasons above given, the compulsory formation of a public map would be open to serious and grave objections, yet the use of a map properly authenticated for each individual estate, and made on a uniform scale, would probably furnish, together with the usual verbal description, the best means of identifying the property, and the clearest mode of indexing correctly the registered title to it. One of the witnesses has

(*a*) See evidence of Mr. Blamire.
(*b*) See Col. Dawson's evidence, pp. 4, 5.
(*c*) See on this subject Col. Dawson's evidence.

observed in his evidence (*a*) that "a map is a good servant, but a bad master; "very useful as an auxiliary, but very mischievous if made indispensable." In this opinion we concur; and while we would deprecate the adoption of maps in any mode, or for any purpose, which would make them binding upon or conclusive of the rights of parties, we would encourage and even require their use in each case, so as to obtain a description and admission of the particular property which the party applying intends to have registered. In furtherance of the same purpose a discretionary power should be given to the registrar for determining how far and under what circumstances any existing public maps might be made available, as well as the scale upon which either the private maps or copies of the public ones should be prepared and employed.

Third Plan.

XXXVI. The next plan which has been brought before us is that which was previously submitted to the Select Committee of the House of Commons. (*b*) This plan is founded on the belief that the transfer of land may for many purposes be assimilated to a transfer of stock. Every person who, in respect of power or interest, has the absolute right of disposing of the fee simple of property in land, would, according to this plan, be entitled to put the estate on the register, and to transfer the ownership thereof to any other person, subject to such rights and interests as were created before and existed at the time when the registration of the property was effected. And inasmuch as this part of the plan would be slow in its operation, and for fifty or sixty years would involve an investigation of title anterior to the registry in every dealing with the land subsequent to the registry, it is proposed that the person seeking registration should be empowered to apply to the registrar to have the title duly investigated by a counsel and solicitor of his own selection; and then, if the title should be found in all respects to be perfectly marketable, the registrar is to be authorized to guarantee or warrant it against all claims that might be brought in respect of it. But since persons having limited interests might be prejudicially affected by the acts of the registered owner, it is likewise proposed to enable such persons to protect themselves by the entry of distringases, to be obtained and to operate in the same way as stop orders are now obtained and operate on the transfer or disposition of stock in the funds. A similar mode of registration is likewise provided, by means of a subordinate register, for leaseholders. This plan does not provide for the registry of anything beyond the simple transfer of the ostensible ownership in fee and leases. Dealings which concern partial estates or equitable interests only will not be assisted or protected by the register, except when (as against an improper disposition by the registered owner) a distringas is put on. In fact, the purpose of this plan is, to attach to each landed estate a formal and ostensible proprietorship, to which the right of sale and transfer may be incident, in cases where the whole fee simple is intended to be disposed of, and to remit those who, in any case, may have right to restrain the sale or transfer, or to complain of it, or are interested in its proceeds, to the protection of the distringas, or to their personal claim against the individual.

Objections to third plan considered.

XXXVII. The material objection to this plan is, that transfers by the registered owner are stopped or prevented so long as there are mortgages on the property protected by distringas, and that mortgagees must either be themselves placed on the register as owners in lieu of their mortgagors, or must be content with the protection of a distringas. Another objection is, that a general liberty of entering distringases on the oath of parties, stating that they have an

(*a*) See Mr. Joshua Williams's evidence.

(*b*) See Mr. Cookson's, Mr. Field's, and Mr. Williams's evidence, and the Appendices Nos. 1 and 3 to the House of Commons Report of 1853. See also Mr. Cookson's paper in Appendix A. to this Report

interest in the land, and on an ex-parte order of the Court of Chancery, may lead to complications, embarrassments, and litigation, which ought to be avoided. Some further check may perhaps become necessary to prevent this liberty from being abused, and we believe such check may be found and provided.

It is also considered by some of the Commissioners that the advantages to be derived from registration would under this plan be postponed to too remote a period, unless some means could be devised of ascertaining and protecting on the register, within an early period, rights in registered land created anterior to the registry.

The principal change in the law which this plan involves is, that after the commencement of the registry no disposition by a registered owner will be allowed to pass any interest less than the whole fee simple, except leases. The transfer must vest an absolute proprietorship in the transferee, whether the purpose of the transfer be a sale, a mortgage, or a settlement.

Other Plans.

XXXVIII. Other plans for the registration of title have also been submitted to us, and are given in the Appendix. One (*a*) of these, by one of the Commissioners, is substantially the same as the last, with the exception that it makes no provision for a system of warranty to which he objects. The others (*b*) we have not failed to give attention to, but they do not appear to us to call for special remark in this place.

As to Registration of Title. Observations introductory to the Plan about to be recommended.

Points of agreement in the plans.

XXXIX. The previous examination of the different schemes before mentioned will tend to show the special difficulties which we have to avoid, and the particular provisions upon which all are agreed. They are agreed in recommending that the entry in the register should be the only manifestation of actual ownership for purposes of transfer. Each of these plans, moreover, suggests a certain "registration of title" to land; and what is thus proposed is not a registration of that which is now known as "the title" to land, but of some form of landed ownership which, as part of the scheme in question, and for the purposes of it, must be adopted, and established by alterations in the existing law. Each of the schemes proposes, to a greater or less extent, to remove existing complexities of interest in land, and therefore more or less implies change in the nature of title. The difficulty consists (and here the plans essentially differ) in effecting the transition from the existing system of title, and in endeavouring to reconcile the registered ownership with the preservation and protection of unregistered interests. Most of the plans adopt some kind of mapping and some system of warranty; but they vary in the mode in which these objects are sought to be accomplished.

Problem to be solved.

XL. Bearing then in mind such agreements and differences, and taking advantage of the different suggestions submitted to us in each of these schemes, we find that the problem which has to be solved is this:—By what means, consistently with the preservation of existing rights, can we now obtain such a system of registration as will enable owners to deal with land in as simple and easy a manner, as far as the title is concerned, and the difference in the nature of the subject matter may allow, as they now can deal with moveable chattels or stock? No one doubts that it would be a great benefit to the proprietors of land

(*a*) See Mr. Headlam's paper in Appendix A.

(*b*) See Mr. Wakefield's and Mr. Macdonnell's and Mr. E. N. Ayrton's papers in Appendix. See also Mr. Dugmore's evidence, and Mr. Boyle's pamphlet entitled "Suggestions for a General Index of Titles."

if they were able to convey it with the same facility as the owners of ships, or of stock, or of railway shares, can now assign their property in any of them. But the question is, Can this be accomplished?—and, if so, how?

In answering these questions, it must be assumed that no plan of registration will be acceptable or desirable unless it leaves, substantially and practically, to the owners of land powers of disposition and rights of enjoyment of similar extent and facility of exercise with those which they possess under the present system.

Difficulties resulting from long existence of the present system.

XLI. One remark should here be made, which is apt to be lost sight of; it is this,—that if there had been always a register of land, as there is in fact a register of ships, of stock in the funds, and of railway shares, it would be difficult to point out any substantial distinction between property of that description and land, so far as regards the mode and form in which they might respectively be transferred or sold. The distinction between them has arisen, not so much from the different nature of the things themselves, as from the different regulations to which they have been subjected in their origin and in the development of their legal qualities. Both kinds of property are equally the creatures of and require the protection of the law. Both admit of transfer from one person to another. Both may be subject to family settlements. But the right to the one has grown up under the feudal system of law, adapted, no doubt, as far as it could be done by judicial decision, to the varying wants of mankind, but without the aid of a controlling power which alone would be sufficient to simplify its tenure or facilitate its disposition. The right to the other has been created and regulated by Parliament itself, which, having to deal with a new subject, determined at once to allow no trusts to affect the transfer of it, and therefore excluded from the register of the right to it all modifications which might otherwise qualify the absolute ownership. Had land always been similarly registered and similarly transferred, no one would now think of imposing on its present proprietor the harsh and unnecessary burthen of furnishing, before he could part with a single acre, a detailed history of every transaction relating to the property for a period of sixty years; nor of forcing him, before he could borrow 100*l.* for purposes of improvement, to prove every birth, marriage, death, settlement, charge, conveyance, or incumbrance that might by possibility affect the title for more than half a century past; and if this be so, how much more beyond reason would it be to compel an owner, after such a process had been gone through on his purchase, again to undergo it, when he might wish to sell that to which the title had been both recently and abundantly proved. Assuming that we are right in this conclusion, and we think that few will doubt it, the difficulty of giving to the owners of land the same benefits as those enjoyed by the owners of ships, stock in the funds, and railway shares, is the difficulty of applying a new principle which, in a new state of things, has been found to be practicable and advantageous, so far and in such a manner as to render it applicable to an old state of things, which is justly complained of, and which has become prejudicial to the interests of society, in those very particulars in which it disregards that principle. It is the difficulty of unravelling the intricate meshes of form and technicality with which the owners of real property are surrounded and entangled, the difficulty of assimilating the transfer or alienation of that kind of property which has been hitherto subjected to these forms and technicalities to the transfer or alienation of that kind of property which has always been without them; the difficulty, so to speak, of undoing, as far as regards the future, that which has grown up into a kind of necessity, until it has almost come to be supposed that the security of property in land depends on the fetters with which all freedom of action respecting it is tied up and restrained. We will proceed to show how we think

this assimilation may be effected, notwithstanding the complications in which the title to land and the transfer of it are at present involved.

Objects aimed at.

XLII. The objects in view are, to form a register of title as distinguished from a register of the various deeds and assurances under which the title has been derived;—to form this register in such a manner that the retrospective inquiry into the former dealings and transactions, which on a transfer is now necessary, may be avoided;—to make this register instrumental in simplifying generally the title to land and the forms of conveyance; and at the same time to continue, as far as possible consistently with a simple register of title, the existing system of settlements, and to avoid impairing unduly the security of settlements and trusts. These objects, moreover, we consider ought to be accomplished, if possible, in a manner which will avoid the special objections incident to a system of registration of assurances, but at the same time will secure the particular benefits and advantages which, as we have stated, belong to that system.

What a register ought to be and do.

XLIII. In endeavouring to accomplish the objects in question, we have come to the conclusion that the register ought to be composed of a succession of simple transfers merely, and should manifest only the actual and existing ownership of the land for the time being, without laying open the history or past deduction of it. It ought, in fact, to be a record of the ownership existing at the time of any supposed search of the register. If the register were to disclose as part of the existing title the former dealings, it would be found not to afford the requisite relief from the obligation of retrospectively investigating the title.

What ought to be put on the register.

XLIV. We further think that, consistently with the objects in view, no form of ownership or property, besides the fee or entire ownership, with the exceptions next mentioned, can be allowed to be put upon the register. The registered ownership should, with those exceptions, always be the fee or whole interest in the land forming the subject of the registry. Charges on the fee, however, and leases, being (apart from the fee) subjects of marketable dealing, and interests commonly bought and transferred, should also be admitted to the register, separate places being provided for them.

What ought not to be mixed up with it.

XLV. Some of us think, indeed, that beneficial interests in land not amounting to the fee, and dealings with such interests, might usefully and advantageously be registered. We conceive, however, that registration, as to such interests and as to dealings with them, would, in all material points, resemble a registry of assurances, and that such a registry should not be mixed up with or form part of a registration of title. Any such register should (*a*) be entirely distinct, and should not in any way affect purchasers of the fee, but should only bind the parties who created minor interests and incumbrances, the owners of such interests, and their heirs and personal representatives and assigns, and the trustees. This distinct register might be useful in regulating the distribution of the money arising from a sale of the fee, and in determining questions of priority, but it should not in any way complicate or impede the sale of the fee.

We, however, confine ourselves in this report to registration of the fee and charges on it, and leases; only observing that the system of registration here recommended will be found compatible, as we believe, with the subsequent establishment of the subordinate registry we have mentioned, should that appear

(*a*) Professor Hancock's evidence.

advisable, when the registration of title has been found upon trial to answer the ends which are intended to be promoted by it.

Certain preliminary questions stated.

XLVI. Before proceeding to state in detail the form and effect of the registration we propose, it may be convenient that we should advert to some questions of primary moment which affect the subject of registration of title generally, and which have received our careful attention, as presenting themselves at almost every stage of our investigation.

These questions are :—

1. Whether registration shall be compulsory or voluntary ?

2. Whether the title conferred by the registry shall in the outset be parliamentary or unimpeachable, or shall be subject to be defeated by the claims of persons having rights created before the commencement of registration ?

3. Whether, if the registered title be not at the outset unimpeachable, interests created before the commencement of registration shall become in any manner bound or affected by the registration after the lapse of any given period, or otherwise ?

4. Whether the registry of the legal ownership will be compatible with the due protection of the equitable or beneficial interests in land ?

5. Whether it shall be a metropolitan or a provincial registry, or both metropolitan and provincial ?

First question (compulsory registration) considered.

XLVII. In considering whether registration shall be compulsory or not, it is necessary to bear in mind the various senses in which a system of registry may be said to be compulsory.

1. One form of compulsory registration of title would be to require all owners or persons in possession of land to make their claims and apply for registration within a limited period, on pain of losing their rights, or of other claimants being admitted to the register upon their default. This species of compulsory registration of title we do not recommend. Such a system would tend to disturb possessory titles, by arousing dormant claims and encouraging litigation, and would contravene the general policy of the law in respect to possession, which we deem to be a very wholesome one.

2. Persons applying for registration may be required to prove their title or submit it to a quasi-adverse investigation, as a condition of their being admitted to the register. We think such a compulsory investigation of title, though only required as a preliminary to registration, would be highly objectionable ; and we do not recommend it. It would involve, as has been pointed out in the evidence before us, the necessity of having every title to every acre of land thoroughly investigated by a competent judicial tribunal. It would (*a*) be distasteful to landowners, who would be very reluctant to disclose their titles, and it would occasion the bringing forward of many stale and ill-grounded claims,—would give rise to litigation,—and would, when completed, be of no practical benefit to any, except those who contemplated selling their estates. It is also to be borne in mind that many persons in quiet possession of land have bought it under special or restrictive conditions of sale, which have precluded them at the time of their purchase from calling for strict or proper evidence of the title, and have limited them to some short period of the title in their investigation of it. It would, we think, be highly unjust to call upon persons in such a situation for strict and technical proof of their title, such as alone any public authority charged with certifying titles ought to be satisfied with.

(*a*) Mr. J. E. Walters' evidence.

3. Registration of every dealing with land may be rendered as essential to perfect such dealing as any other solemnity which is required for the legal alienation of land. This is another description of compulsory registration. We think, however, that it is unnecessary to adopt any such principle of compulsion. Except so far as the object of securing a register of the ownership for the protection of purchasers requires registration, dealings with land not perfected by entry on the register ought to be allowed to have effect.

4. Registration may be rendered necessary in order to obtain priority for a transaction affecting land as against another transaction relating to the same land which may claim the protection of the register; in other words, as between two transactions affecting the same lands, priority may be given to that which is first entered on the register. With reference to registration compulsory in this sense it has been urged, (*a*) on the one hand, that by not making the original registration of title compulsory the gradual adoption (if it shall take place) of the system will be, so far, a test of its usefulness and suitableness to the condition and wishes of the country, whilst its non-adoption would render it innocuous. It is further said that, considering that the measure is novel in its character as well as in its operation,—considering the advantage of gradually introducing it, instead of incumbering the registry office with a mass of applications which it would be difficult to get through,—considering that the main object of establishing such a system is to obtain, if possible, a facility of transfer which many persons whose properties are kept in a course of settlement may not desire immediately to possess,—and considering that the change is sure to recommend itself if it is likely to be followed by those benefits which are anticipated, it would be advisable, at least in the first instance, to make the registration purely voluntary. It is said, on the other hand, (*b*) that there should be one law for the whole country, and that it would be a highly objectionable system to propose that some purchasers may bring their estates within the pale of registration, and others, at their option, remain unaffected thereby. It is also urged that a main benefit of the system will be lost, if the register should not be the sole and conclusive evidence of dealings taking place after the establishment of the register, or if, as to such dealings, a retrospective investigaton of the title by purchasers should in any class of cases be necessary. Generation after generation (*c*) might pass away in the successive enjoyment of property without any assertion of title on the register; and when made, some thirty, forty, or fifty years hence, it must either be clothed with a parliamentary or other warranted title, or else after that lapse of time a retrospective investigation of title would be needful. The conclusion to which we have come on this point, though not without some difference of opinion, is that registration shall not, at any rate in the first instance, be necessary to a transfer of the fee in order to obtain for it preference or priority over any subsequent transfer which may be brought to the registry for completion.

5. Another mode in which registration may be made compulsory is to require that, as to all land once voluntarily put on the register, the subsequent dealings and title should be always continued on the register. In this sense we concur in thinking that registration should be compulsory.

Second question (Parliamentary title) considered.

XLVIII. With reference to the second of the questions above pointed out, we think that the observations already made, showing that applicants for registration ought not to be required first to submit their title to judicial scrutiny,

(*a*) Mr. J. B. Murphy's evidence.
(*b*) Mr. Kettle's evidence.
(*c*) Mr. Dugmore's evidence.

are sufficient to prove the objectionable nature of any scheme of registration which should profess to confer at the outset a parliamentary or unimpeachable title. It would, we think, be oppressive, either on the one hand to require claimants out of possession to come forward, and make assertion of their rights, in order to avoid losing them, or, on the other, to put the persons in possession to the defence of their rights, as against any stale claims or assertions of right that might be set up. We do not think that in order (*a*) to pass from our present system to a register of title it would be necessary, as has been suggested, to create a jurisdiction in commissioners, applicable to all land, whether incumbered or not, similar to that of the Incumbered Estates Court in Ireland, by which an absolute or parliamentary title to the land, subject to leases or tenancies, should be declared. On the contrary, we concur in the opinion of one of the witnesses (*b*) who has given evidence before us, that to make a judicial or quasi-judicial examination of title an indispensable preliminary to admission to the register would greatly narrow the benefits of registration. The expense alone of the examination would exclude nearly all small properties, and the trouble and expense combined would exclude many others. Defective titles would necessarily be excluded; and we do not see why a defect in the title to land anterior to the introduction of registration need deprive that land of the benefit of an improved mode of transfer subsequently. We think that a registration founded on ostensible or possessory ownership should be permitted in the first instance, and that on such a registration the antecedent title might be left to be the subject of investigation, until by lapse of time or otherwise that investigation should become unnecessary.

Third question (pre-existing interests) considered.

XLIX. The next question we have to consider is, whether interests existing in land before the time of the first registration of the land shall be in any manner affected by the operation of the register, after the lapse of any given period or otherwise.

It has been strongly urged upon us, (*c*) that if the provisions of the registry should operate upon the subsequent title only, and if the old title should be left open to investigation for the full period during which it is now liable to be affected by latent rights, the utility of the registry would be wholly lost to the present generation. On the other hand, it is said that any one who by the existing law has an interest which he might set up, supposing there were no registration of the ownership, ought to be allowed the same period of time and the same opportunities that he now has for asserting his right, though the effect of his claim might be to disturb and undo the existing registration at a remote time subsequent to the commencement of the registry. The question hence arises, whether the principal benefit of the proposed system, which is the avoiding the necessity for retrospective investigation of the title, may not be secured by fair and reasonable provisions at some period earlier than the full time when all possible claims existing anterior to the registry would, by the existing law, have expired or become barred. We have been reminded (*d*) that if the legislature should adopt such a rule it would be only following an analogy furnished by their predecessors. A statute of Henry 7th gave to a fine levied with proclamations after five years a conclusive effect. The proclamations were nevertheless in practice a mere fiction, and gave no real notice to others, and the period of five years was adopted at a time when

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(*a*) Professor Hancock's evidence.

(*b*) Mr. Macdonell's evidence.

(*c*) Mr. Commissioner Longfield's, Mr. J. B. Murphy's, Mr. Dugmore's, Mr. Meadows White's, and Mr. Farrer's evidence.

(*d*) Mr. Dobbs on the best means of giving increased facilities to the transfer of land.

communication was difficult and intercourse confined. The effect of a fine with proclamations remained in force until the Act was passed abolishing fines and recoveries; and it is said that its abolition by that Act, without a substitute, has been frequently regretted. It is contended that in the present day we have need, for the purposes of commerce, of the same policy which for different purposes and in a ruder state of society animated feudal tenures; and that the course of years has brought us round again to feel a want somewhat analogous to that felt in the early period of our history, though with different aims. It has been further urged, (*a*) that if provision be made for the due publication of the registration or the application to register, the registration ought to be allowed to attain its conclusive effect, after the lapse of some period shorter than is now required by the general Statutes of Limitation to extinguish dormant rights; in other words, that the title if not impeached in a given time, say a short term of years, after the title is put upon the register, and full notice of it published, might pass into an absolute and unimpeachable title, at least for the purposes of sale, and thus retrospective investigation of the title avoided in the case of a sale to a purchaser. Those who entertain these views consider, however, at the same time, that all parties, or their trustees, should have the power or right, within the prescribed period, to show cause against the title, and should not be obliged to wait until their interests are reduced into possession; and further, that, with the view of justifying and facilitating the application of such a provision, some moderate evidence of ownership, sufficient to exclude the hypothesis of fraud, should be adduced by every applicant for registration.

The conclusion, however, to which we have come, though with some difference of opinion, is, that interests created in land before the commencement of registration should not be adversely bound or affected by the mere registration as such, but should be allowed to be claimed, notwithstanding the registration, within the period now fixed by the Statutes of Limitation.

Fourth question (protection of beneficial interests) considered.

L. We next proceed to consider whether registration of the legal ownership will be compatible with due protection of the equitable or beneficial interests in land.

It has sometimes been supposed that any system of registration of title will require a decision as to which of certain principles alleged to be irreconcilcable touching the theory of disposition of landed property ought to prevail; whether, on the one hand, the stability of settlements, or, on the other, the safety of buyers, or, in other words, the protection of families or the marketability of land, ought to form the paramount consideration. After mature examination, however, we have been led to the conclusion that no such dilemma is in fact involved in the institution of a registry of title.

Were we to allow, however, that such a difficulty does in fact present itself, we should be able to rely (as has been well remarked (*b*)) on our ancient law as affording for the present purpose a wise and useful precedent; for just as the feudal law required that the freehold should always be filled by one capable of contributing to national defence, and performing the duties of a feudal follower, so the spirit of commerce now demands that for its purposes also the fee simple in land shall always be represented and be in the possession of persons capable of fulfilling those new duties and offices which the ownership of land in the present state of society entails or involves.

As regards the sale and transfer of land, it is clear (*c*) that much good would not be obtained by merely registering the fee, or, in other words, the

(*a*) Mr. Clifford Lloyd's evidence.
(*b*) Mr. Dobbs on the best means of giving increased facilities to the transfer of land.
(*c*) Messrs. Nicholl and Smyth's evidence.

legal title, unless the purchaser could dispense with inquiry into the equitable title, with its incidents. Unless a purchaser be protected from inquiring into trusts, there will not be any advantage to him. In other words, (*a*) if trusts and limitations are to continue to form part of the title in all respects as they now do, the registry of title will be useless, or at least not worth the danger and difficulty attendant upon the introduction of a new system.

The question, then, is, (*b*) whether the present system of settlements can be modified without materially interfering with the nature or quantum of interests commonly created by them. Any material interference with the nature of such interests would be objectionable; but, under modified forms, the system may, we think, be continued consistently with the objects contemplated by a register of title.

Equitable interests and trusts cannot, (*c*) consistently with the objects to be attained by registration of title, bind or affect the ownership of a registered purchaser, unless such interests are of his own creation; but they may be allowed to confer a right against the land whilst in the possession of the owner who created the trusts, or in that of his representative, or volunteers claiming under him. When the land is sold without fraud, the equities and trusts must be transferred to the funds arising from the sale; and so the purchaser will take the lands discharged of the trusts. But they may be protected on the register of title by the trustee of the family settlement, or by a trustee named by the Court of Chancery, and sales by the settlor or the trustee in contravention of the trusts may be prevented by entering an inhibition or caveat.

Thus the existing system of settlements, by which the limitations and trusts of the settlement modify and become part of the title, will be unchanged under a registry of title, so long as the land continues in the possession of the settlor or volunteers claiming under him, or the trustees of the settlement. Upon a sale without fraud, these limitations and trusts will attach to the funds arising from the sale.

It has been suggested (*d*) as another mode of providing for equitable interests, that where a person beneficially interested enters an inhibition or caveat, it would be a convenient mode to enter the name and address of such party in the principal register, with a reference to a distinct register in which the nature of the equity might be specified, and this latter register would be in the nature of a register of trusts, and the legal title could thus be kept distinct from that relating to the equities. This corresponds to the suggestion already made, that in order to perfect the system of registration it may be expedient hereafter to establish a subordinate register of equitable and secondary estates, independent of the principal registry of the fee.

We are aware that it has been objected (*e*) to the portion of the proposed system now under consideration, that partial and equitable interests constitute a very large proportion of landed interests, and that while to require them to be registered would be to sacrifice the simplicity of the register, to exclude them from the register would be to jeopardise them, by placing them at the mercy of the registered owner, except so far as the persons entitled to such interests might become active in using the allowed means of restricting his power of disposition. It is remarked with truth, that the owners of these interests may now remain passive, and yet be sufficiently protected. It is therefore contended, that to deprive them of their present grounds of security, and substitute

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(*a*) Mr. Commissioner Longfield's evidence.
(*b*) Mr. Dugmore's evidence.
(*c*) Professor Hancock's evidence.
(*d*) Mr. Warner's evidence.
(*e*) Mr. J. T. Humphrey's evidence.

the necessity of taking active measures, by distringas or otherwise, to protect themselves from improper dealing on the part of the registered owner, would be placing such owners in a new and critical condition, requiring much intelligence and caution, and would tend greatly to diminish the value of these numerous and very important interests, which are themselves constantly the subjects of sale and transfer. A settlement of land, it is said, (*a*) would, under such a system, come not to differ practically from a settlement of a sum of stock, which would be felt by some to be an evil; many preferring an interest in land, because, to use a not uncommon expression, "while they are sleeping land cannot run away."

We may remark, however, in reference to these objections, that experience and existing practice will furnish the best answer to them. According to the modern practice of conveyancing, the apprehended danger has not been found to arise in analogous cases, where trustees are clothed with as large powers as they would have under the proposed system. That practice has especially been directed to avoid the embarrassment of a complicated system of trusts, which, by the rules of equity, fasten themselves on the land, and provisions are constantly inserted (*b*) in settlements, to render it unnecessary that purchasers or mortgagees, when dealing with trustees, should be forced to see to the circumstances under which the trust is performed, or the manner in which the proceeds are applied. For example, under the present system most well-drawn settlements of landed estates contain clauses empowering the trustees to sell, with the consent of the tenant for life, if he be living, but if he be dead, at their sole discretion, and to give absolute discharges for the purchase money; and yet no sales, excepting those within the object and provisions of the trust, are ever heard of. Again, this principle is carried so far that the property is often conveyed to the trustees by one deed, while the trusts are declared by another. And what is the object of these complicated proceedings, except that the trustees may appear to the purchasers, or be treated by them, as absolute owners, and that those purchasers need not know anything of the purposes for which they hold the property? Again, under the present system of conveyancing, a mortgagee has usually a power of sale, which he may exercise without the concurrence of the mortgagor; but experience has shown that this power is very rarely abused, and it is uniformly given without hesitation. We therefore think that the practice (*c*) of inserting powers of sale in settlements and mortgages proves that the proposed scheme of registration, when properly understood, will not be considered objectionable by landowners. Nor should it be forgotten that there are millions of money in the funds, and in railways, canals, docks, and other undertakings, left to a great extent in the names of trustees, and yet it has been found that property so circumstanced is practically safe. Can it be believed that what is safe for beneficial interests in such property, when prudently looked after, will be otherwise than safe when applied to land, especially if there are thrown over it those additional protections which we recommend in this Report? With such protections, prudently claimed and carefully acted on, we conceive the answer must be in the negative. And if any further proof were needed, we should find it in the fact that the legislature itself has recognized (*d*) the principle upon which we proceed, and applied it to property in British ships, as may be seen by the recent Statute for amending and consolidating the Acts upon that subject.

It may also deserve remark, (*e*) with reference to the supposed objection

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(*a*) Mr. Alfred Bell's evidence.
(*b*) See on this subject the Report of the Registration and Conveyancing Commission, p. 30.
(*c*) Mr. Geo. Sweet's evidence.
(*d*) See 17 & 18 Vict. c. 104. s. 30, &c.
(*e*) Professor Hancock's evidence.

arising from the risk of fraudulent sales by trustees, that the contemplated sale of land is usually known to tenants and other persons in the locality, and is therefore less likely to be effected by fraud than transfers of stock.

Fifth question (Metropolitan or Provincial office) considered.

LI. The remaining question is, whether the register shall be a metropolitan or provincial one, or, in other words, whether it shall be central or local, or both central and local? Or, to put the question more accurately, shall there be—

One central register for the whole kingdom; or,

Several county registers for the several subdivisions of the whole kingdom; or

One central register for the whole kingdom, with branch offices in the principal towns throughout the kingdom?

A central register for the whole kingdom would, of course, be established in the metropolis; county registers would probably be in the largest, or most central, or most generally accessible town in the county.

The advantages of a metropolitan register over county registers have been stated to be the following:—

1st. Under a metropolitan register a uniformity of system throughout the whole kingdom would be established, which would hardly be attainable, or at any rate maintained, in several county registers.

2nd. One metropolitan register would be much less expensive than from fifty to sixty county registers. For in each county register there would necessarily be an efficient registrar, and a deputy competent to discharge the duties of the registrar during his absence from illness or other inevitable cause.

3rd. One metropolitan register, under the superintendence of a registrar of high professional attainments and experience, and efficient deputies and subordinate officers, would inspire more confidence on the part of the landowners of the country than several county registers would do.

4th. The registers of judgments, bankruptcies, and insolvencies must necessarily be metropolitan.

5th. The suggested system of distringas would be more efficiently worked, and uniformity of practice would be more securely preserved, in one metropolitan register than in numerous county registers.

6th. A metropolitan register would be less expensive to parties employing solicitors resident in the country. Every solicitor in the country, without exception, has an agent in London with whom he is in daily confidential unreserved communication, and no additional expense, or the smallest additional expense possible, is occasioned to the client by reason of the employment of a London agent. The remuneration of a solicitor is on a fixed scale, and, as to the business transacted by the agent, the remuneration is divided between the agent and country solicitor. They are, as regards the particular transaction, very much in the position of partners residing in different towns. Through his London agent, therefore, the country solicitor might obtain from the metropolitan registry all the required information, at the same cost to the client as if the register were in the town where the country solicitor practised. But the country solicitor rarely has a confidential agent in any other place than London, and if he does not reside in the register-town he would be obliged to employ a local solicitor, or to make a journey to the registry for the purpose of search or registration, and it would often happen, where secresy was desired, that he would find it his duty to incur the expense of a journey.

7th. With county registers it would constantly occur, that solicitors in distant parts of the country, as well as solicitors in the metropolis, would have no

knowledge of the solicitors in the particular town where the county register might be. Many of the solicitors in large practice in London have clients who are landowners in many of the counties in England, and they would be much inconvenienced and embarrassed by a system of county registers.

8th. The ordinary communication between London and country towns, to say nothing of the telegraph, is often much more rapid and regular than between one country town and another, and of course the postage of letters is the same whatever the distance may be.

It has, on the other hand, been urged (*a*) that the registrar ought to be charged with the duty of ascertaining the accuracy of the description and identity of the land, and that to ensure this a local register would be indispensable, and that a union of the two systems would be at once practicable and desirable.

With reference, therefore, to the question whether the office should be a single metropolitan office, or whether it should be subdivided into various provincial offices, our opinion is, that both suggestions may be combined with great advantage. The principal office should be situated in London; but local or district registries should be also established.

We now proceed to state the leading particulars of the registration we recommend.

As to Registration of Title. Leading Particulars of the Plan recommended.

The office.

LII. A land register and transfer office for England and Wales will be established in London under the management of a registrar general; and branch offices will be also established in different districts throughout the kingdom, subject to the orders and regulated by the authority of the Registrar General.

The kinds of property.

LIII. The registration will extend to all corporeal hereditaments, except copyholds, and to advowsons and rentcharges, except perhaps tithe rentcharges.

General right of owners in fee simple to obtain registration.

LIV. After the establishment of the office, all owners or proprietors of land who have the right of possessing or the power of disposing of it in fee simple will be at liberty to apply for the registration of the ownership thereof; so that such ownership, or the title to the land which is the subject of the same, may thenceforth be manifested by the register alone.

Supposing this to be accomplished safely and with prudence, the effect of the register, when in complete operation, will be to render it unnecessary, in dealing with land which has so been registered, to look beyond the last ownership appearing on the register, and thus the expense of long investigations of title,—of deducing that title through numerous assurances, pedigrees, and devolutions,—of requiring covenants for the production of deeds in the hands of third parties,—of lengthened abstracts, recitals, and conveyances,—will, on the occasions of future alienation, as the register advances, be gradually diminished, and eventually be altogether avoided.

Two difficulties, however, here arise: the one, in first bringing titles on the register; the other, in protecting the different interests and incumbrances which may now be derived out of or charged on the fee simple of land, and connecting them with the registered ownership. We have endeavoured to remove both these difficulties.

Two kinds of registered ownership.

LV. Registration of title is proposed to be twofold; one which shall at once enable the registered owner to transfer the estate with a present or immediate

(*a*) Mr. J. Meadows White's evidence.

statutory title; the other registration of actual ownership, without the power to transfer an immediate statutory title.

Prevention of improper attempts at registration.

LVI. In the second of these cases, that is, in the case of registration unattended with immediate statutory title, the parties applying will be required to produce before the registrar a declaration on oath, stating that they are in the actual enjoyment of the rents and profits, and that they believe themselves to be absolutely entitled to the land in fee simple free from all incumbrances, or subject only to such incumbrances as are distinctly specified; and they will also be required to produce, where it can be done, the last instrument of conveyance of the fee simple, or such other evidence as the registrar may find it necessary to require, with the view of excluding fraudulent claims. Powers also will be conferred on the registrar to give such public and other notices as he may deem necessary of the intention of the parties to have the property registered, in order that they may not wrongfully procure a registration which may be detrimental to other persons.

But where the title to lands has been ascertained by decree or judgment of any Court whose jurisdiction is competent to determine the right, there the production of such decree or judgment by the person in whose favour it may have been made, or the order of the Court consequent thereon, will alone be sufficient to authorize the registrar to register the ownership of such person, subject to the necessity of making such declaration and serving such notices as above adverted to.

Registration with warranted title.

LVII. Registration with immediate statutory title will take place in those cases where the owner of land desires, not only to obtain a title which, with regard to the future, will be manifested and established by the register alone, but a title which with regard to the past cannot be disturbed. We have already adverted to this part of the subject, and we have stated, for reasons which we need not repeat, that the suggestion of a guarantee or warranty of title is in our opinion most valuable. In this class of cases (*a*) it will be lawful for the parties seeking registration with the benefits of a warranted ownership to apply to the registrar to have the title investigated with that object. In such cases, it will be right that the registrar should cause the title to be fully investigated, at the expense of the parties, by counsel and solicitors; and if he shall be satisfied on their advice that the title is a good one, then, on the payment of a small premium, to be calculated by way of a per-centage upon the estimated value of the property in question, he will register the ownership as a warranted one, either in the name of the party applying, or, if the party applying shall prefer it, then in the name of such persons as he may nominate for that purpose. Since the guarantee of the title will be given by a public officer, the premiums payable by the party obtaining such guarantee will be paid into the Exchequer; and the Consolidated Fund will be liable to make a fair and reasonable compensation to any person who may within the period allowed by law establish a claim in respect of the estate, the title to which has thus been registered with a warranted ownership. A similar provision will also be extended to those cases where land is sold under the decree of a Court, subject to the payment of similar premiums, and to the title being examined and approved of in a similar manner. (*b*)

See Paragraph XXX.

It may here be mentioned, that the suggested warranty has to some extent the advantage of precedent in its favour. For when lands are sold (*c*) by the principal

(*a*) Mr. Headlam objects to the system of warranty. See his paper at the end of this Report.

(*b*) Mr. Napier approves of the proposal to make *decretal* titles under judicial sales, indefeasible; but objects to a warranty by the *Registrar* as above.

(*c*) See 5 & 6 Vict. c. 94. ss. 5 to 15.

officers of the Ordnance department, Parliament has empowered them to give to purchasers a clear and indefeasible title, making compensation to those persons who can establish within a limited period any legal or equitable right to the property.

Certificate of ownership.

LVIII. In both the above cases, for the convenience of parties, as evidence of their title to the property registered, and for other purposes which we will hereafter refer to, a certificate of the fact that it has been registered will be delivered by the registrar to the party applying; and this certificate, duly authenticated by the seal of the office, will be a certificate either of warranted or unwarranted ownership, as the case may be. It will be advisable that this certificate should state on the face of it the name of the registered owner, the lands registered, and the incumbrances (if any) to which they are subject. It will also contain a reference to the indexes which relate to the entry thereof in the books of the registry.

General effect of registration.

LIX. The general effect of the kind of registration here recommended will be, that for the purposes of transfer, the registered ownership will at all times represent the fee simple of the property, and, as such, it will not be capable of any subdivision or modification into partial or limited estates or interests, except so far as charges and leases may also be admitted to the benefit of registration under the provisions, which we shall presently mention.

Right of disposition incident to the registered ownership.

LX. The right to dispose of and transfer the ownership of land in fee, including the right to charge and lease the same, will belong and be incident to and in fact be taken as forming part of the registered ownership.

What, unwarranted ownership free from, and what not.

LXI. When the registered ownership has not been warranted, it will be subject to such rights and interests as existed in or were capable of attaching upon the property at the time of the first registration, but it will not be subject to any rights or interests arising or created at any period subsequent to the time when the first registry was effected, except charges and leases admitted to the register, and except interests protected by caveat or inhibition, as afterwards mentioned. Thenceforward the title to the property, for the purposes of transfer, will be manifested by the register, and by that alone; and so eventually the only title to land which a purchaser need examine will be the last transfer as the same is recorded in the registrar's books. At the commencement, indeed, the validity of the title of the first registered owner will still depend, as it does now, on the validity of the title of the party by whom the transfer has been made. But as time passes on this title will gradually strengthen itself, until it has reached a period which, under the operation of the Statute of Limitations, will make it complete, and mature it into an unimpeachable statutory title. Year by year the purchaser will be brought nearer and nearer to this result, and so the expenses which attend the retrospective investigation of title will be gradually diminished, until they reach their minimum point.

What, warranted ownership free from.

LXII. When the registered ownership is a warranted ownership, the special advantages to be derived from this system of registration will immediately follow. In such cases the registered ownership will be subject only to other registered rights, and will be exempt at once from all latent claims and interests which may have been created previously to the time when the property is registered. The registered owner will therefore have, forthwith, for the purposes of transfer, a simple, complete, and indefeasible title.

Such a result will tend, not only to diminish the expenses attending the transfer of land, but also to increase the value of land as a marketable com-

modity; for the value of land when offered for sale is not merely to be measured by the purchase money paid, but likewise by the costs which the vendors and purchasers must necessarily incur in deducing the title and ascertaining its validity. In proportion as these costs are diminished the value of the land will be raised. Great as these advantages unquestionably are, they are not the only advantages which may be expected from a system of warranted ownership; for a well-devised scheme of warranted ownership will afford so perfect a security to titles that no latent interests, no dormant trusts, no fresh claims, which may have been concealed or overlooked, can possibly interfere with the enjoyment of the purchaser; and the land will be as clear from all rights, other than those which are actually registered, as stock which is purchased in open market.

What, registered ownership, whether warranted or not, will be subject to.

LXIII. The registered ownership, whether warranted or otherwise, will at all times represent, for the purposes of transfer, what is usually known as the fee simple, subject to such charges and leases as may be admitted to the register, and in the case of ownership not warranted, to the title antecedent to the first registration. In other words, the register will be a substitute for the documentary or parchment title. But the registered ownership, whether warranted or otherwise, will remain subject, as the fee simple now is, first, to such other rights as are not usually included in the abstract of title, (*a*) that is to say, those rights which are incident to the property in a physical rather than a legal sense, and those which are presumed to attach on all landed property; and secondly, also to such rights as may be ascertained by inspection on the land itself, or by inquiry of the occupier. Under the first of these heads we include all easements, such as rights of water, rights of way, rights of sporting, and rights to light, and those interests which are denominated in law profits *à prendre*, and tithe rentcharges, land tax, and other taxes and rates of a general character; under the second we include short leases at rackrent where the lessee is in actual occupation of the premises. These are rights which are commonly evidenced by known usage or continued enjoyment, or may be ascertained on the spot by inspection or inquiry; and the title to them is generally so independent of the documentary title to the property that they will necessarily form a partial exception to that which will constitute the registered ownership, whether warranted or not.

Facility of obtaining loans.

LXIV. It may be convenient, before quitting this branch of the subject, to point out as one of the effects of such a system of registration the great facilities which it will afford to landowners to obtain loans for temporary purposes. The possession of the certificate of the registered ownership, as an equitable security for money advanced, will confer the same privileges and be attended with the same rights as those which are derived from the possession of title deeds under a deposit. And it can hardly be doubted, that for the security of those who advance money under such deposits the assurance that there could only be one title deed to the property pledged would be of much importance. In transactions of this kind, the lender is always liable to be imposed upon by the suppression or concealment of some particular deeds which may qualify the borrower's right, and we therefore concur in an opinion expressed by one of the witnesses before the Select Committee of the House of Commons, (*b*) that "it is probably not too much to say, that there is no point "on which the proposed registration of landed property would work better "than in improving the security of lenders on deposits of title deeds, and,

(*a*) See Mr. Commissioner Hargreave's evidence.

(*b*) See Mr. Bullar's suggestions and notes in Appendix to the Report of Select Committee on Registration of Assurances Bill.

" consequently, so far as facilities in borrowing inexpensively may be deemed " advantageous, in facilitating the obtaining of loans on such deposits."

Mode of protecting unregistered interests.

LXV. The second difficulty to which we have adverted is the difficulty of providing an adequate security for those interests which are not of a nature to be admitted to the register. The ownership of land, whether registered or not, will still be subject to various derivative or beneficial interests which will require protection. The distinction between legal and equitable interests is not a mere technical distinction. It is a matter of fact. Its continuance is necessary for the full enjoyment of property. So far as the interests of purchasers exclusively are concerned, it would be better, no doubt, that the vendors or registered owners should in all cases be the sole owners, both at law and in equity. But the beneficial ownership or equitable estate being often divided between several persons, the right of present enjoyment being in one person, and the right of future enjoyment in another, and the person who is entitled to the present enjoyment being sometimes a minor or under other disability, and the person entitled to the future enjoyment being sometimes unborn or unascertained, a necessity arises which must be attended to of protecting interests such as these, which would still be unregistered, against the unjust acts of the registered owner. Occasionally it has been thought that the equitable interests might be put on the register; but if that is done, it is demonstrable, as we have observed in a previous part of this Report, that the advantages of a registry of title would soon be lost, since it would become in fact little else than a registry of assurances, and a very imperfect one. The protection must be provided in some other mode, and we think it may be obtained in various ways.

Same subject. No survivorship between registered owners.

LXVI. Where the parties to a settlement desire it, they will have the power of registering the property in the names of two or more persons as registered owners, with a short note (the words "no survivorship" will be sufficient), intimating that in the case of the death of either the *jus accrescendi* is not to have place. (*a*) The effect of this will be, that if one of the registered owners die, no alteration of the ownership can be made until his place is filled up. And as the prevailing instances of fraudulent or improper alienation of stock are those where it has devolved upon one trustee, this simple provision (which will completely prevent the devolution of the registered ownership upon a smaller number of persons than those first registered) will operate as an almost perfect protection to all parties who have or may have any kind of interest in the registered land under any settlement of which the registered owners are trustees.

Same subject. Caveats to prevent sale without consent.

LXVII. As a further protection, those parties who are entitled to any unregistered interest which, as the law now stands, would render their concurrence necessary in a sale of the fee, will be at liberty to enter in the registry a caveat (*b*) or inhibition against the transfer of the registered ownership. This caveat or inhibition may and ought to be of various kinds, or various in its operation, so as to adapt itself to the different circumstances under which it will be required. To prevent abuse it will be lodged at the register office, only under proper sanctions, such as the consent of the registered owner, or the order of the Court of Chancery if the registered owner improperly refuse to give his consent; and to secure protection suited to the various conditions of settlements, the caveat or inhibition will be allowed to be so framed as to prohibit the transfer of the registered ownership either for a time specified,

(*a*) See Mr. Commissioner Longfield's answer to question 24.

(*b*) Mr. Scully considers that more convenient modes of protecting unregistered interests might be provided than the proposed caveats. See his paper at the end of this Report.

or during particular lives, or until the occurrence of a stated event, or without the concurrence of certain parties who for that purpose may be named or referred to as protectors, or under any other condition conformable to law which the parties themselves may think fit to impose. The simple effect of such a provision will be, that as long as the caveat or inhibition remains, the registered ownership cannot be alienated without the permission of those whose consent will be thus rendered necessary; but if all these parties desire a sale, that consent can previously be obtained, and so the purchaser will always be able to contract for the property, on the express condition, or with the absolute certainty, that he need not move in the matter until the title has become perfectly clear of the equitable interests thus interposed. (*a*)

Same subject. Injunction by Court.

LXVIII. When it is remembered that the protection thus afforded to the beneficiaries of land will be greater than that which is now afforded to the beneficiaries of stock or railway shares, there can hardly be a doubt that,—taken in connexion with the fact that, except as against purchasers without fraud, the beneficial interests will continue as now to affect the land,—these various methods of protection will be found sufficient. If it be suggested that fraud may still be practised, the answer is that there will still remain the remedy by suit, by injunction, and by account. For it is to be observed, that an unregistered interest will entitle the beneficiary to enforce the performance by the registered owner—not being a purchaser—of such duties as properly ought to be observed and performed by him; and for that purpose, but for that purpose only, those duties will be deemed to be trusts cognizable like other trusts in the Court of Chancery, and determined like other trusts on the principles of equity.

Registered owner, where only a trustee, not to retain the registered ownership as against the beneficiaries after trusts satisfied; but this not to affect purchasers.

LXIX. Where the registered owner shall be a person named such for the purposes of any settlement, then, as between such registered owner and the beneficiaries interested under the settlement, he will not be at liberty to retain the registered ownership, or to remain on the register as registered owner for any longer period or under any other circumstances than according to the present rules of Courts of equity he would be entitled to retain the legal estate if he were a trustee of the fee upon trusts similar to the provisions contained in such settlement, and he will be bound to make a grant of the registered ownership to such person as may be named in that behalf by the beneficiaries.

On death of registered owner his executor to be the new registered owner, or a new registered owner to be appointed.

LXX. In order to keep up the chain of title, and to prevent the difficulty which might arise upon the death of any registered owner in obtaining a transfer, we think it will be convenient that for the purposes of this measure, as well as for the purposes suggested by the Chancery Commissioners, a real representative should be appointed, upon whom the registered ownership shall devolve. This representative will be ordinarily the executor; but where an executor has not been named, or where he has died or renounced probate, power will be given to the parties interested to apply to the registrar or to a judge to supply the place of the deceased registered owner, and to enter the name of some proper person in his stead.

(*a*) It has been suggested that it might be lawful for the parties interested in the trusts of any settlement or will to deposit privately with the registrar a copy of the settlement or will at the time when the lands which are or may be the subject of such settlement are entered on the register, with a private instruction that no transfer shall be afterwards made of the registered ownership without the consent of the parties who for the time being may be interested or who may have power of consenting under the settlement or will, or otherwise than under and in conformity with the powers of the settlement or will.

LXXI. We have already intimated that in our opinion no plan of registration will be acceptable or desirable, unless it leaves substantially and practically to the owners of land the same powers of disposition and enjoyment, and means of protection and security, as those which they possess under the present system. The plan recommended will secure this object. For, subject and in subordination to the registered ownership, qualified and explained as we have mentioned, the owners of land or of the unregistered interests therein will be at liberty to settle, devise, and deal with the same for the like estates, to the like extent, and generally in the like manner, as by the rules of law and equity they would have been entitled to do if the registration of the ownership had not taken place. All the rights of tenants for life or other persons having partial interests will be left unaffected and undisturbed, for the registration will not interfere with the right of beneficial enjoyment and management of the land, and the property cannot be dealt with by the registered owner except when a transfer is by the absence of a caveat impliedly permitted. It may also be observed, that such a system will have the effect of keeping private all family arrangements, while it will continue the enjoyment under them, and provide for their security So that the advantages of trusts and settlements will be effectually preserved; while the title will not be incumbered, nor the transfer impeded by any notice of such trusts or settlements. The provisions necessary to prevent alienation against the will of those who are entitled to say that the property shall not be sold will not involve any such notice.

All powers now possessed by landowners left untouched.

LXXII. Registered transferees without valuable consideration will be subject to the claims of the persons interested in the unregistered ownership, in the same manner as their transferror would have been; but this can be so provided for as not to affect registered purchasers from volunteers, without fraud; and a further provision can be added, that it shall not be necessary to inquire whether the registered owner acquired his title as a purchaser or not.

As to persons becoming registered owners by gift.

LXXIII. We propose that fraud in obtaining a transfer of the registered ownership shall defeat the title of the person who becomes registered owner by fraud, but that notice of unregistered rights shall not merely as notice have any such effect. We think that though the purchaser in the course of his inquiries, or before he concludes the purchase, has notice of any claims upon the estate, it will not be unjust to deprive the parties interested in such claims of their rights in favour of such purchaser, if their rights are not protected upon the register. We do not agree (*a*) that any attempt to exclude the application of the doctrine of notice would prove abortive. We are aware that it has been said that the judges would, notwithstanding any law to the contrary, in the course of time contrive some means of neutralizing any enactment which went to exclude the doctrine of notice, just as our Courts of old contrived to prevent the Statute of Uses having the effect intended by the legislature; and that to abolish the doctrine of notice altogether would be contrary to every principle of justice and equity. After full consideration, however, we cannot adopt these views, but, on the contrary, we concur generally in the reasons adduced by the Real Property Commissioners in their Second Report (*b*), in favour of excluding the interference of Courts of equity on the ground of notice.

As to notice and fraud.

LXXIV. In determining the provisions necessary for securing a proper description of and the means of identifying the lands admitted to the register, it will be useful to bear in mind (*c*) that in every investigation of title there

Mode of describing and identifying lands on register.

(*a*) Mr. J. E. Walters' evidence. (*b*) Pp. 37–40.
(*c*) See Mr. Cookson's paper, Appendix A.

are three important questions to be attended to, viz.—First, whether the title deeds disclose a clear title to the lands described in them?—secondly, whether in that description all the lands intended to be dealt with are truly comprised?—and, thirdly, whether the actual possession of the lands is consistent with the title as so disclosed? Now, looking at the plan which is here recommended, it is clear that the difficulties arising from the first of these questions will be completely met when the register is in full action. For a purchaser will not be under any necessity of requiring and examining documentary evidence, the register alone, for purposes of transfer, manifesting at once the title to the lands which form the subject of the registered ownership. With reference to the third point, it will still be necessary that the possession of the lands should be inquired into by purchasers, lest it should be adverse to the registered ownership. The second, however, of these questions, we have here more particularly to consider. We have intimated our opinion that although the compulsory formation of public maps would be open to many and grave objections, yet the use of a map properly authenticated for each individual property, together with the customary verbal description, would probably furnish the best means of describing and identifying the land, and indexing it correctly. To accomplish this object in the fullest manner, we accordingly recommend,—

See Paragraph XXXV.

1. That the registrar shall have power to require the description of the registered lands to be stated and set forth in such form and manner as he may deem to be best fitted for the purposes of registration.

2. That at the time of registration it shall be lawful for the registrar to require the parties applying to be registered as owners of any lands, to produce a private map or plan of the lands proposed or intended to be registered; and that such map or plan shall be made on such scale and contain such particulars for identifying the same with the property registered as the registrar by any general or special regulation may in that behalf require.

3. That before the registration of the ownership of any land, the private map or plan so produced by the applicant shall in every case be referred to in the description of the lands required to be entered on the register itself.

4. That the registrar shall also be empowered to require at the time of registration that the property proposed or intended to be registered shall contain a reference in the description given of it to some public map to be kept in the registry.

5. That for that purpose he shall be at liberty to declare that the maps made under the direction of the Master-General of the Ordnance, the Tithe Commutation maps, or any other maps of the accuracy of which he is satisfied, shall be deemed public maps for the purposes of registration; and if he thinks fit he shall cause copies or reprints of any parts thereof to be made, either on the existing or on an enlarged scale; and such maps as are directed to be used for the purposes of registration shall be deposited in the registrar's office, and copies thereof published and sold in such manner and subject to such provisions as the registrar may direct.

6. And that as the main object of the public maps will be to facilitate searches and references, the registrar shall be empowered to adapt the maps to the districts created for the purposes of registration, or to form the districts with reference to the number, quality, and description of the available public maps, so that each district may have its own public map or maps to which the parties seeking for information will be able to refer.

Mode of transferring the registered ownership.

LXXV. Having thus provided for the first registration of title to lands, for the protection to be given to unregistered interests, and for the mode in which the identity of the property may be ascertained, the provision to be made for subsequent dealings with the registered ownership by way of transfer, mortgage,

or lease, will be comparatively easy. Beginning with transfers, when the registered ownership is in a single name and unfettered by a caveat, that party alone can go to the registrar, and desire the transfer, on production of the certificate of registered ownership. When a purchaser has bought the land of the registered owner, the application of the one and the authority of the other will, on the production of the like certificate and a deed of grant, be sufficient for the purpose. And when the ownership has been guarded by caveats, the previous withdrawal of them, on the consent of the persons in whose names they are entered, or by an order of Court, will enable a purchaser without any trouble or further inquiry to see at once whether he can complete his contract. The transfer will be made by deed, and in a short and simple form, which the Act will authorize. On proper evidence being adduced before the registrar of the validity of the deed, he will enter in the register the name of the transferee in the place of the transferror. When that has been done the transfer will be complete, and will pass the whole fee simple; and on the completion of it the registrar will deliver to the transferee a fresh certificate of registered ownership, if the whole of the registered land has been transferred; but if the transfer is confined to a part, he will deliver to the transferee a certificate of ownership limited to such part; and he will deliver to the transferror a fresh certificate of ownership containing a description of the lands retained by him.

The effect of such transfer will be, to give to the person registered an absolute title to the lands so registered for the purposes of alienation, free from all interests created subsequently to the first registration of the land. If the registered ownership is a warranted ownership, it will further be freed and discharged of all estates and interests whatsoever, excepting easements, registered leases, and registered charges; but if the ownership has not been warranted, it will be subject to any claims which existed at the time of the first registration, and have not since become extinguished or barred by time.

Registration of incumbrances.

LXXVI. With regard to incumbrances, we (*a*) think that the benefits to be derived from registration should be extended to the owners of charges upon the fee of land as fully as to the owners of the fee itself. The registration of charges may properly be subjected to the following rules:—

1. Every charge intended to be registered shall so be entered on the register as to show the name of the owner thereof, the lands upon which the same is made, the amount of money secured thereby, the rate of interest payable thereon, and the date of the instrument by which it is created.

2. Every such charge shall also be entered under some proper sanction, such as the consent of the registered owner to the registration thereof, or the order of a competent Court decreeing or directing the same to be registered.

3. On the registration of such charge the registered ownership will be subject to the legal rights and powers incident to the charge, and either may be transferred independently of the other.

4. A certificate of the charge will be given by the registrar to the party applying to register the same.

5. The priorities of all charges shall be determined exclusively according to the dates of their respective registration.

6. Unregistered charges shall only take effect as unregistered interests, but may be protected in like manner as unregistered interests.

(*a*) Mr. Headlam objects to an independent Register of Incumbrances or Leases. See his paper before referred to.

Registration of leases.

LXXVII. The benefit of registration will also (*a*) be conferred on the owners of leases for the term of twenty-one years and upwards. The registration of leases will be subject to the following rules:—

1. Every lease intended to be registered shall so be entered as to show the name of the owner thereof, the length of the term, the date of the lease, and the rent reserved.

2. Every such lease shall also be entered under some proper sanction, such as the consent of the registered owner, or the order of a competent court decreeing or directing the same to be registered.

3. On registering such lease the registered ownership will be subject to the legal rights incident to the lease, and either may be transferred independently of the other.

4. A certificate of the lease will be given by the registrar to the party applying for the registration of the same.

Transfer of incumbrances and leases.

LXXVIII. The mode of transferring registered charges and registered leaseholds will be similar in all respects, *mutatis mutandis*, to the mode of transferring the registered ownership. And on the death of the registered owners thereof, their representatives will be entitled to be registered in their place.

Extension of powers of sale of Court of Chancery.

LXXIX. There are some cases in which provisions, in connection with the proposed register, may be made to facilitate the sale and transfer of land, though not provisions which can be said to be indispensable to the system as a system of registration. It has been suggested to us (*b*) that means might be devised by which the conversion of land into money could be effected at once, with the concurrence only of the person having possession and enjoyment of the land, if care were taken to provide a safe independent place of deposit for the money for division among the parties having pecuniary claims on it. Facilities, it is said (*c*), might be given in some cases to allow the transfer of the land to proceed, impounding the consideration for the transfer, and fixing it with the equities under notice. This, it is urged, would be specially desirable in cases of pecuniary claims or charges on the land the title to which charges may be embarrassed.

We have adopted these views, and propose to vest in the Court of Chancery certain powers for the purpose suggested.

Indexes.

LXXX. A provision which it is most important to attend to is the mode of indexing the property registered. This must be left to a great extent to the determination of the registrar. But since there are three matters more or less distinct from each other, yet more or less connected together, which would have to be entered in different ways, namely, registered ownerships, registered charges, and registered leases, there must be also three sets of indexes corresponding therewith; namely, first, an index of registered owners; secondly, an index of incumbrancers; and, thirdly, an index of lessees; and these indexes should so far refer to each other that the registered ownership should always show by a distinct reference whether such ownership was subject or not to any existing charge or lease.

Miscellaneous provisions.

LXXXI. With regard to some miscellaneous questions as to the machinery of the proposed registry, we think that the title deeds should not be required to be delivered up to the registrar; that the registrar should have a general power of determining conflicting claims by consent, or of putting them in a

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(*a*) See Note (*a*) p. 41.

(*b*) Mr. Bartle J. Frere's evidence. (*c*) Mr. J. Meadows White's evidence.

course of judicial determination; that no tenancy in common should be allowed in a registered ownership; that a general power should be given to the registrar of making necessary regulations; and that there should be a difference of fees for large and small transactions.

Authority of Registrar.

LXXXII. With regard, however, to the powers to be entrusted to the registrar, we conceive that, as a general principle, his authority should be ministerial and executive in its nature, and not judicial. We agree in an observation contained in the evidence before us (*a*), that there is no feeling more strongly rooted in the public mind than dislike of official interference with their private affairs, and any system must be considered practically impossible, however theoretically perfect, which would render the approval or sanction of a registrar necessary for the completion of transfers, or would give him any discretionary power to prevent them.

Conclusions in favour of, and Answers to Objections against, the Plan recommended.

General conclusions in favour of the measure.

LXXXIII. This measure, so novel in its character and so difficult in detail, demanded from us and has received the most careful and searching examination. The best means, in fact, of testing its practicability were afforded to us before this report was drawn up, by the labours of one of the Commissioners, who prepared the sketch of a Bill (*b*), with the requisite provisions and machinery for the practical working of the measure. This Bill, which will be found in the Appendix, was examined by us in detail, and from it we derived much valuable assistance in framing this report. In some respects it differs from the recommendations which have here been made; in principle, it agrees with them altogether. Novel, therefore, and difficult as the measure may be, we see no reason to doubt its practicability, and we can consequently recommend it with more confidence, and in the belief that while it would obviate all the difficulties which are likely to spring from a registration of assurances, it would provide those benefits in the transfer of land which registration is intended to confer. On the one hand it will be found, that the expense and delay which must always be occasioned by a retrospective investigation of title,—the evil of accumulating year after year a vast mass of documents in one registry,—the complication and difficulties which would thence arise,—the danger of disclosing the private affairs of individuals, and the other objections above adverted to, in a registration of assurances, will all be avoided. On the other hand, it will be seen that the removal of those impediments with which the alienation of land is surrounded,—the ready means afforded of raising money by temporary loans for purposes of improvement,—the facilities for partial or complete alienation, without disturbing existing interests, or interfering with the rights of settling property which are now enjoyed under the present law,—and the perfect security which a purchaser may acquire by obtaining easily a parliamentary or warranted title,—will confer on land an enhanced value, and free the owners of it from those embarrassments to which no other property has ever been subjected.

Objections urged against it

LXXXIV. The main objections which have yet been urged against such a measure are, first, that it excludes from the registered title all those various modifications of ownership which the law allows, other than fee simples, mortgages, and leases; and, secondly, that the warranty of title to lands will be

(*a*) Mr. Kettle's evidence. (*b*) See Mr. Lewis's Bill, App. B.

open to serious inconveniences. We will make some remarks on each of these objections.

First objection as to the limited extent of the measure.

LXXXV. With regard to the first objection, it must be admitted that the benefits intended to be conferred by registration are confined, in the first instance, to the registration of the fee simple, mortgages, and leases. These, it is to be remembered, are the properties in land which most usually form the subject of sale and transfer. Transfers of other rights and interests are for the present excluded from the proposed register, because it is desirable, at least in the first instance, that the plan should not be unnecessarily complicated. In the meantime there is nothing to interfere with those rights and interests. They will be as capable of being exercised and enjoyed after the establishment of the register as they are now. The measure proposed expressly preserves them. And as long as it preserves them, the owners of them will have all the control over the management of the property with which the law now invests them, and which their settlors or testators intend that they should have. Further than this it might be imprudent to go, before the measure has moulded and adapted itself to the practical wants and habits of the community.

Second objection as to warranty.

LXXXVI. With regard to warranty, it is considered by some of the Commissioners to be contrary to the general policy of this country to allow the State to enter into pecuniary speculations of any description; that though there may be reason to believe that the sum which landowners would be willing to pay for such a warranty would be more than equivalent to the risk incurred by the Government, or, in other words, that the speculation would be a good one; yet, as there is no experience on the subject, no confident opinion can be expressed; and that it is obvious that if at any time there should be carelessness or fraud on the part of the officers of the Government who have the management of the scheme, the loss to the State might be of a most serious description.

In the second place, it is said that there is a great objection to the plan arising out of the manner in which it deals with the rights of individuals. It provides that any person establishing a claim on land guaranteed by the Government shall forfeit his right or interest in the land itself, and in lieu receive a money compensation to be paid by the State, and apparently to be also estimated by the State; and it is argued to be most objectionable that the contract between an individual and the State should be allowed to affect the rights and interests of a third person, who is not in any way cognizant of or a party to the contract.

Independently of the foregoing objections, which apply to the principle of the scheme, it is considered that there are considerable practical difficulties incident to its execution; and that but few of the titles to land would bear so searching an investigation as would be necessary in order to obtain the warranty. It is lastly said that the costs and expenses of an application for a warranty would be serious and certain, the result of the application would be doubtful, and in the event of a refusal a stain would be cast upon the title, and its defects made known and exaggerated. We have considered these objections, and agree in thinking that they are entitled to attention; but a majority of the Commissioners have come to a conclusion in favour of the principle of warranty. They can see no reason why the great benefits which have been conferred in Ireland on encumbered properties should not, by analogous measures, be extended to unencumbered properties, and also to this country. A parliamentary or warranted title is the one great desideratum to enable parties to deal as freely with their landed estates as they now can do

with their personal effects. If the title is investigated with ordinary care, as no doubt it would be, by the counsel and solicitors selected for that purpose, the risk run is more nominal than real. If it should turn out that there was some claimant whose possible rights had been overlooked, he would receive compensation which the premiums paid by way of insurance would probably be more than sufficient to cover. If the purchaser should think that these premiums would entail upon him a new expense, the answer is, that he need not incur it unless he derives an equivalent advantage. But instead of this we believe he would feel that this advantage was more than an equivalent for that expense by the clear title which he would thus obtain, by the additional value given to his land, and by the perfect security in which he would hold it.

Answer to the Inquiry as to "the Advantages and Disadvantages" of the Plan recommended.

LXXXVII. Having now stated the leading details of the plan of registration we recommend, we propose to consider, in answer to the inquiry intrusted to us, "the advantages of and disadvantages attending such a system." Whether there are any disadvantages attending the system.

LXXXVIII. In regard to what may be the disadvantages of registration of title, we may refer to the different parts of this report in which objections and difficulties have been adverted to and dealt with. We have shown that the existing evils are great; and we have acted upon the principle laid down by the Real Property Commissioners, that it should be made out, to a reasonable degree of certainty, founded on a careful investigation of facts and mature deliberation, that the proposed remedy is practicable, and that it will be effectual; that it is the best that can be devised; and that it will not itself be an evil, or productive of evils, equal, or nearly equal, to those against which it is provided. We are of opinion that the plan recommended by us fulfils or satisfies all these conditions; and at all events these objections, even if allowed to have the character of disadvantages, cannot be deemed seriously to detract from the very great benefits which landed proprietors, and the buyers and sellers of land, will derive from the measure we have recommended.

LXXXIX. The advantages of the system will consist in giving facilities to the sale and transfer of land in the following respects:— The advantages of the system.

1. It will secure the principal benefits and advantages sought to be attained in a system of registration of deeds. (*a*)

2. The system will render unnecessary retrospective investigation of the title, as to all dealings subsequent to the commencement of the registration, and will gradually operate to dispense with such investigation altogether.

3. It will simplify the title to real property for the future (though it will not, except where warranty is obtained, confer at the outset a parliamentary title as against interests existing anterior to the registry), and it will have this effect

(*a*) There are, however, two exceptions:—The exceptions are, that it will not directly tend to make equitable or secondary estates more marketable than they now are, and that it will not afford the means of obtaining evidence of the contents of lost deeds. The former defect or objection will, however, cease to be material if the subordinate register of derivative estates to which we have more than once referred be established, and the objection may at all events be alleviated by an alteration in the law as to the obtaining of priority by the legal estate and the doctrine of tacking, which is one of the amendments of the general law subsequently adverted to in this report. The latter defect will not, as to future titles, be of any considerable moment as regards purchasers of fee-simple estates, for title deeds will, under the operation of the registry here recommended, become of less consequence than they now are as evidences of title to the fee.

even though it should happen that no concurrent improvements are effected in the general law of real property.

4. It will make purchasers of the fee and leases perfectly secure.

5. It will simplify to the utmost possible extent the forms of transfer and the modes of conveyance.

6. It will tend to increase the saleable value of land.

The system will effect this last benefit (*a*) by removing difficulties, and thus increasing the desire to invest in land. It will also enable the buyer to ascertain his expenses accurately. At present the expense depends partly upon matters which come to his knowledge only after he has entered into the contract. There will in fact (*b*) be a saving to the buyer of the expense of investigating title and conveyance, and to the seller of preparing the title. The seller will indeed still have to bear the expenses of distributing the purchase money, but this he must do under the present or any other system.

7. It will tend to lower the rate of interest on loans secured upon land. It has been well said that the greatest condemnation of the existing system of lending money on land is the reluctance which bankers, the natural traders in loans, have to lend on mortgage or judgment. The security which they refuse, careless trustees, ignorant people who have savings, and widows and others who have some small provision, are advised to accept, and in this way the whole risk of bad security is thrown on the classes least able to bear it. (*c*)

8. It will confer facilities for the sale of large estates in lots. We agree in the statements of one of the witnesses, that the necessity for investigating the past title, and procuring the means of proving it and substantiating it for the future, places great obstacles in the way of selling a considerable estate in numerous lots; as it is generally difficult and always expensive to furnish each purchaser with the necessary evidence. One of the important advantages of a new and parliamentary title is found in the great facility it confers for the subdivision of estates upon a sale.

9. It will enable persons to obtain a warranty of their titles at the same or nearly the same expense as that incurred in an ordinary purchase under the present system.

Miscellaneous Recommendations and Observations.

Improvements in the general law and practice of conveyancing.

XC. But it is our opinion that as the register cannot in the first instance be made to confer an immediate statutory title in ordinary cases, some changes in the general law, having a tendency to simplify title, should be made concurrently with the establishment of the registry. The evidences of title and its devolution may be rendered more simple in various particulars which have been pointed out in the evidence before us, and are hereafter adverted to. By making those improvements in the law, the register, without being made to confer immediate parliamentary title, may nevertheless be instrumental in producing immediately many of the advantages in regard to simplicity of title and transfer which will result from its own proper and unassisted operation, when its action has become complete. Facility of transfer and simplification of title

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(*a*) Mr. Commissioner Hargreave's evidence.

(*b*) Mr. R. J. Farrer's evidence.

(*c*) Some experience as to the bearing which an improved state of title may have upon the rate of interest is furnished by the Report of the Select Committee of the House of Lords, appointed to consider whether it would not be desirable that the powers now vested in the companies for the improvement of land should be made a subject of general regulation, for it appears from that report that one great advantage afforded by these companies is, that a landowner holding in fee can borrow cheaper under these Acts than he could otherwise, by reason of the mortgage being a primary charge under the Acts, and by reason of an investigation of title not being required, as in other cases.

act and re-act upon each other. We think that the establishment of a register should only be part of a general plan for amending the law of real property, in the particulars presently adverted to. We concur in the opinion of one of the witnesses (*a*), that, considering the cumbrous forms employed in conveyancing, it would be extremely impolitic to establish a register that would, as it were, stereotype a decaying system, and perhaps stand in the way of its thorough reformation, or, in case of its being superseded by a better, would induce the inconveniences of a register begun in one era and continued in another.

The improvements in the law of real property and the forms of conveyancing which have been suggested to us we have thought it advisable to embody in the sketch of a Bill, which has been drawn by one of the Commissioners, and will be found in the Appendix. Thereby the title to real property, independently altogether of the registration we recommend, and during the gradual introduction of the system, would be greatly simplified,—by the abolition of certain technical modes in the creation, limitation, and disposition of estates,—by turning mortgages into mere securities, but with the same powers of recovering the money which are usually conferred on the mortgagee,—and by giving to certain instruments such general effects as are now expressed in a lengthened form, and which add greatly to the cost of the transaction. These provisions do not strictly fall within the main object of the inquiry submitted to us, but they are so nearly allied to and so much connected with it that we have deemed it our duty not to overlook them. They are also framed upon the principle recommended by experienced witnesses (*b*), of first deciding on the plan of the registry, and then altering and simplifying the general law with reference to that plan. We hope that this Bill, together with the plan which we submit to Your Majesty for the registration of title, will be of use in assisting Parliament to deal at once with the whole subject.

Partial establishment of the register in the first instance.

XCI. One practical suggestion there is, which it may be useful we should make, with regard to the policy of establishing the register in the first instance partially. As was said (*c*) of registration of deeds, we doubt whether any scheme of indexes, which ingenuity may devise, will be such that registration, with all its incidents, may start into life a perfect system, answering at once every purpose for which it is intended. We think there must be some practical experience, some working of the system, before office arrangements can be made which will be so perfect and simple that information (the non-discovery of which may be prejudicial) may readily be obtained. We therefore conclude that it would be desirable to try the registration partially at first, and establish the system to its fullest extent in some particular county or district. If it should be found to answer the objects for which it is intended, it might be then universally established; or the office created for that county or district might be extended to the whole country.

Peculiar facilities for the establishment of the register in Ireland.

XCII. Before concluding this report, we think it right to observe, that the circumstances of landed property in Ireland at the present time afford peculiar facilities for the introduction of an improved system of registration into that part of the United Kingdom. The long-established Register of Deeds, the Ordnance Survey, and the Incumbered Estates Court, in that country, furnish materials and machinery for effecting the transition from the existing system to the new one much more readily and speedily than can be anticipated in England.

(*a*) Mr. Dugmore's evidence. (*b*) Mr. Bellenden Ker's evidence.
(*c*) App. to 2 Re. Pr. Com. Rep., 133.

We are informed by competent witnesses that the Ordnance Survey is considered one of the most valuable acts of practical government that has ever been carried out in Ireland. The maps are in almost universal use in the management of estates, in the sale of land, and in the valuation of land for public and private purposes. The boundaries of the old divisions of the country, such as counties, baronies, parishes, and townlands, are set out on the maps; the Poor Law unions and electoral divisions are aggregations of townlands, and can therefore be at once ascertained. In the southern counties the maps show the divisions of fields and tenements; and this system is being extended to the northern counties. These maps afford, it is said, the requisite materials to construct a public map as a basis of registration. The scale of the Ordnance Survey is for the entire country six inches to the mile, and the separate maps of towns are on a scale of sixty inches to the mile.

The existing (*a*) and long-established Registry of Deeds in Ireland appears to afford additional facilities for ascertaining satisfactorily the existing titles to and interests in land in that country. These facilities might, of course, be increased by the application for that purpose of the machinery of the Incumbered Estates Act.

Great as are the benefits, however, which the Incumbered Estates Court has conferred upon titles in Ireland, it is a remarkable circumstance that there is no provision for perpetuating and continuing, as to future transactions, the parliamentary title obtained upon a purchase from that Court. The title is unimpeachable as to all transactions prior to the time of the purchase; but immediately after the purchase the transfer of the land becomes subject to the general law, and as to all transactions taking place after the purchase the title is liable to become again involved in complications and embarrassments similar to those from which it was relieved by the sale under the Incumbered Estates Act. Permanent simplification of title and simplicity of transfer are not attained by the Act, and retrospective investigation of the title becomes again necessary (though at present not to the same extent as formerly).

The system, therefore, which we have recommended, is required not less for Ireland than for this portion of the United Kingdom, while, at the same time, as we have already observed, the facilities for its introduction there are much greater than in this country.

The remuneration of solicitors.

XCIII. We take leave further to observe, that we think it will be very difficult to deal fully or satisfactorily with the subject of registration of title without making fresh regulations on the subject of the professional remuneration of solicitors. We observe that the Real Property Commissioners also found it necessary to direct their attention to this subject when making their report in favour of the registration of assurances.

In England a solicitor is allowed to receive such fees only as the judges of the Court assign him, and these fees are so devised as to attach to certain portions only of his work, leaving the rest to be done without fee. In matters of conveyancing, the whole trouble of the transaction is principally compensated by fees assigned according to the length of the various documents. Theoretically, in England, a solicitor is entitled to the same fees for superintending transactions relating to the smallest properties as to the largest. In Scotland, and many foreign countries, the work is principally compensated by a brokerage or commission; a form of remuneration almost universally adopted by the usages of commerce for all other agencies.

The changes we propose for the transfer of land, without materially altering the nature or extent of the more important services rendered by the solicitor,

(*a*) See evidence of Mr. J. B. Murphy.

or the professional superintendence and responsibility involved, will interfere with those particular processes to which the Courts have thought fit almost entirely to attach the solicitor's right to remuneration.

If, therefore, it is considered desirable to continue to prescribe by law a scale of remuneration for conveyancing business, it would seem right that an opportunity should be given for reconsidering the whole subject of solicitors' fees with reference to conveyancing. The services of solicitors will be necessary in the conveyancing transactions contemplated by the measure we propose, and reliance must still be placed upon their honour and character in performing the important duties and incurring the responsibilities which will still attach to every transfer.

XCIV. We are reluctant to conclude this report without expressing our regret that it has not received the concurrence of one of the Commissioners who is known to have given much attention to the subject of registration, and who has embodied his opinions in a Plan to which we have already referred. (*a*) While, however, we acknowledge that our report would have derived additional authority, had he felt himself at liberty to affix his name to it, we have the satisfaction, not only of knowing that we have not failed carefully to examine the proposals which he has laid before us, though unable in the result to adopt them, but also that we have had the aid of his deliberations and suggestions in maturing our views and recommendations even where they differ from his own.

All which we humbly submit to Your Majesty's Royal consideration.

(L.S.) SPENCER HORATIO WALPOLE.
(L.S.) J. NAPIER.
(L.S.) RICHARD BETHELL.
(L.S.) THOS. E. HEADLAM.
(L.S.) VINCENT SCULLY.
(L.S.) ROBERT LOWE.
(L.S.) WM. DAVID LEWIS.
(L.S.) HENRY DRUMMOND.
(L.S.) J. E. DENISON.
(L.S.) W. STRICKLAND COOKSON.

Received the 15th day of May 1857.

CRANWORTH C.

(*a*) Paragraphs XXXI. *et seq.*

THE REFORM CLUB
PALL MALL

Memorandum by Mr. Headlam.

Agreeing as I do with many of the arguments to be found in the Report, and cordially approving of many of the recommendations it contains, I much regret that I am unable to sign it without comment, and that I am compelled to state shortly the portions with which I concur, and those portions to which upon consideration I entertain decided objections.

In the first place, with respect to what may be called the general principle of the Report, namely, that a registration of title may be effected separate and distinct from a registration of assurances, I fully concur. I certainly think that there might be established what I should rather call a registration of the land itself, that is to say, that every estate of land should be accurately described and registered, with the names of one or more individuals, to whom and to whom alone a purchaser upon a sale would have need to refer.

It is quite consistent with such a registration, that all the present various partial interests or modifications of estates in land might continue to exist, though it is true that some change would necessarily take place in the means by which they would be secured and protected. The title of land so registered would be in many respects similar to the position of land that has been made the subject of a well-drawn modern settlement, providing in the first place for a variety of interests and estates in the settled land, but providing also that there may be always in existence persons having the power of selling the land freed from all the estates and interests created by the settlement.

The title of land so registered is moreover similar in many respects to the position of stock, frequently made the subject of complicated settlements which may altogether prevent a sale, but which never render it incumbent upon a purchaser to investigate the title.

There seems no inherent difficulty in the legislature adopting a scheme, by which landowners may gradually and voluntarily put their land into a situation resembling that into which the most valuable estates are now continually placed, and thus, by exonerating purchasers from the expense and risk attending the investigation and acceptance of titles, increase the general value of land, and by facilitating its transfer, adapt it to the wants of a commercial age.

It is obviously incident to such a plan, that the most careful provisions should be made, to give persons entitled to partial estates and interests, ready facilities for securing their estates against a transfer on the register, by which their interests in the land would be utterly destroyed.

Moreover, equal care would be required, to protect absolute and registered owners of land from having their powers of transfer impeded or prevented by claims being improperly placed upon the register.

It is true, that some difficulty may be apprehended in reconciling the means necessary for ensuring these somewhat conflicting objects, but it appears to me that there is nothing insuperable in the task, and if the Report had recommended one registration of land for the purpose of transfer, and pointed out generally the nature of the provisions for the purpose of protecting subordinate estates and interests, I should have been glad to have adopted it without comment.

The Report, however, does not recommend one simple registration of land for the purposes of transfer, leaving all persons having subordinate estates in the same position to be protected by powers and facilities for preventing a transfer prejudicial to their interests, but it proceeds to make a distinction between mortgagees and leaseholders on the one hand, and the owners of different partial estates on the other hand, and endeavours to confer on the former the benefits of a registration of their titles distinct and separate in kind from the privileges of the latter class. This distinction seems to me to be totally untenable in principle. Even supposing the two classes could be accurately and intelligibly

defined, which I very much doubt, there is no reason why the one class should be put in a materially different position from the other.

Moreover, it appears to me that the attempt to establish separate registrations of the same land is inconsistent with the principle of the plan.

If it is possible that there can be one registration of a piece of land for the purpose of transfer, another registration of the same piece of land by a first mortgagee, a third registration of the same land by a second mortgagee, a fourth by a leaseholder, and that the benefits to a purchaser of registration can with respect to this piece of land still continue, then it seems clear that the same facilities of registration should be given to persons having charges upon land by will, to tenants for life, to claimants by executory devise, and to all other owners of partial or limited interests.

If no security can be found in the plan, by restraints upon transfers sufficient to protect the interests of leaseholders and mortgagees, then it would appear that the plan is defective, in not providing adequate security for many other claimants, quite as much entitled to consideration as leaseholders and mortgagees.

For my own part, I think it is quite possible that leaseholders and mortgagees, and also every other person having a partial interest or estate in registered land, should be allowed (subject of course to proper precautions) to place upon the register a note of the nature and duration of his interest, and that during the continuance of his interest it should be the duty of the registrar and of the registered owner not to permit a transfer, except subject to his interest or with his concurrence.

Moreover, there is no reason why the subsequent changes and devolutions of a partial estate so noted upon the register should not also be entered upon the register.

It should, however, be clearly and distinctly stated that a purchaser has never occasion himself to investigate the title for mortgages, leases, or for any other estates or interest in the land, accruing subsequent to the period of registration.

If an estate should be offered for sale without incumbrance, the purchaser should have no other duty imposed upon him, than to see that the land is transferred on the register into his own name, without note of any claim or interest.

If the land be so transferred, the purchaser should be safe, however wrongful the act; and the persons injured will be left to their redress against those who have transferred it. If again an estate be offered for sale, subject only to a mortgage, say, for 1,000*l.* in A.B., or to a jointure of 500*l.* a year in C.D., then the purchaser should have no other duty than to see that the estate is transferred into his name, with no other note or qualification than, in the one case, the mortgage in A.B., in the other the jointure in C. D.

I object to the plan, first, because it makes a distinction between mortgagees and leaseholders on the one hand, and the owners of all other partial interests on the other hand.

I object to it, secondly, because it throws upon the purchaser the duty of searching for registered leases and mortgages, a duty which appears to me inconsistent with the principle of the scheme.

It may be observed, that if it were deemed expedient to have a separate register with respect to the land contained in any conveyance of a partial estate,—for instance, a lease, mortgage, or other subordinate estate,—there seems no insuperable difficulty in providing in such a case that the original register of the land should be modified, and should then consist of the fee simple of the land, subject to the particular estate carved out of it.

In this case neither a purchaser of the partial estate independently registered, nor a purchaser of the original estate, would have any further duty imposed upon him, than that of investigating the register itself. A transfer on the register, of either the one estate or the other, would express clearly what he purchased, and for what he had to pay.

This, however, is inconsistent with the plan as it is now framed, which provides that "the right to dispose of and transfer the ownership of land in fee, "including the right to charge and lease the same, will belong, and be incident "to, and in fact be taken as, forming part of the registered ownership."—See Par. LX.

There is another material portion of the scheme recommended by the Report, to which I am compelled to object.

I allude to the warranty of titles by the Government. The plan is this,—that upon the registration by any person of his land, he may with the sanction of the Registrar enter into a contract with the State, under which the State shall warrant the title to the land, guaranteeing to pay compensation out of the Consolidated Fund to all rightful claimants upon it, and receiving a certain premium from the landowner in consideration of the guarantee.

I think it is contrary to the general policy of this country to allow the State to enter into pecuniary speculations of any description; it is true that there are reasons for believing that the sum which landowners would be willing to pay for such a warranty would be more than equivalent to the risk incurred by the Government; or in other words, that the speculation would be a good one; yet, as there is no experience on the subject, no confident opinion can be expressed; and it is obvious that if at any time there should be carelessness or fraud on the part of the officers of the Government who have the management of the scheme, the loss to the State might be of a most serious description.

In the second place, there is a great objection to the plan, arising out of the manner in which it deals with the rights of individuals. It provides that any person establishing a claim on land guaranteed by the Government, shall forfeit his right or interest in the land itself, and in lieu receive a money compensation to be paid by the State, and apparently to be also estimated by the State. It seems most objectionable, that the contract between an individual and the State should be allowed to affect the rights and interest of a third person, who is not in any way cognizant of or a party to the contract.

Independently of the foregoing observations, which apply rather to the principle of the plan, there are great practical difficulties incident to its execution.

Few of the titles to land would bear so searching an investigation as would be necessary to obtain a warranty.

The costs of an application for a warranty would be serious and certain, the result of the application would be doubtful, and in the event of a refusal, a slur would be cast upon the title, and its defects made known and exaggerated.

Independently, however, of the previous reasons, I do not think that the plan of guaranteeing estates is in any manner essential to the registration of land.

The circumstance that the proposed registration will by itself in course of time work out, without the aid of a Government warranty, what is equivalent to a Parliamentary title, is rather a reason against the necessity of a Government warranty as a part of the scheme. The only object of connecting the scheme of warranty with the registration of land appears to be, that it would in some few cases shorten the period at which a Parliamentary title would otherwise be acquired.

It is undoubtedly true, that time will be required for the full accomplishment of the benefits of this scheme of registration. It is, however, in accordance with the habits and the customs of the people of this country, that changes of this magnitude in the law regulating property should be gradual, voluntary, and accomplished without trouble or expense to individuals; and it seems a perfectly natural and necessary consequence of the plan being thus adapted to the character of the nation, that some time should be required for its complete development.

T. E. Headlam.

Memorandum by Mr. J. Evelyn Denison.

In affixing my signature to this Report, I must qualify the approval by the observation, that I should have preferred a more simple plan, and that I wish it had stopped short of a proposal for a warranty of title.

J. Evelyn Denison.

Memorandum by Mr. V. Scully.

In signing the Report, I have felt that I could concur with it, without receding from my known views, because its leading recommendations are in effect identical with those submitted to the Commission in my Plan and Bill to facilitate the transfer of land (*a*). In order, however, to obviate future misconception, I shall now explain my understanding of the plan recommended by the Report, and the extent to which I still consider that its suggestions might be varied and improved. For this purpose, with the permission of a distinguished member of the Commission (*b*), I have transcribed from his manuscript the following concise Summary :—

Summary of Report (*c*).

1. A Land *Registry Office* shall be established in London (*d*).

2. District offices shall be established in the country, under the orders of the London office.

3. Any owner *in fee-simple* of freehold land, advowsons, or rentcharges, except tithe rentcharge, upon adducing evidence confirmed by his affidavit that he claims bonâ fide to be owner in fee-simple, without any or with specified incumbrances, may, after proper notice, be placed on the register as owner.

4. The registered ownership will represent the fee-simple, and be attended by the right to transfer, charge, or lease.

5. The registration will not, of itself, confer any title against claims existing at the time of registration.

6. If such a title be desired, the registrar will examine (*e*) the previous title, and warrant it, if good, on payment of a small charge.

7. The warranted title will be absolutely indefeasible, and any person prejudiced by such warranty will be compensated by the Consolidated Fund.

8. All estates other than the fee, except charges and leases, shall be excluded from the register and protected by *caveat*.

9. A caveat may be entered *by the consent of the registered owner, or if that be improperly refused* by the order of a Court of Justice.

10. The registered owner shall have absolute power to transfer, subject to charges and leases, *if all caveats be withdrawn*.

11. The registrar shall give to every registered owner a Certificate, which may be pledged by way of equitable mortgage for temporary advances, and must be given up to the registrar before a transfer can be made.

12. The Court of Chancery shall have jurisdiction over the registered ownership.

13. Notice of an unregistered interest shall not of itself, without fraud, bind a purchaser.

14. Charges and leases may be manifested and transferred upon the register.

(*a*) *See* Plan and Bill in Appendix A.

(*b*) The Right Hon. Robert Lowe, M.P.

(*c*) The *Italics* in this Summary denote where the Report varies from Mr. Scully's Plan and Bill in Appendix A.

(*d*) The central office in London is for England and Wales ; there should be a central office in Dublin for Ireland.

(*e*) "The Registrar shall cause the title to be fully investigated, by counsel and solicitors, &c." *See* the Report, sect. 57.

Such being the outlines of the plan for a Registration of Title recommended by the Report, I beg to append the following observations:—

Land Tribunal.

Firstly.—It appears to me that a Land Tribunal, of high position and character (*a*), with avowed judicial powers for deciding questions affecting registered land, and with equitable jurisdiction to enforce rights or to prevent fraud and wrong, would, upon several obvious grounds, be preferable to a Land Registry Office, professing to be merely ministerial, but in effect exercising quasi-judicial functions to confer and to transfer indefeasible titles. The Report, however, affirms the principle of Parliamentary Title; and whilst professing to repudiate a judicial investigation adopts it in substance by authorizing the Registrar to grant a warranted Title, after an investigation by Counsel and Solicitors. It is a secondary question, or rather one of detail, whether the investigation shall be made by a Registrar and persons acting under his direction, or by a Judicial Tribunal. In either case the result is alike, and the investigation partakes of a judicial character.

Thus it appears, as had been anticipated, that for the purposes of Registration of Title—"it will be necessary to institute some new jurisdiction, which "may be called a Land Tribunal, a Land Court, a Land Register, or a Land "Transfer Office" (*b*). The Land Registry Office will in effect be a Land Tribunal, but with inferior position and authority; and deficient in those high qualities which ought to accompany an office of such grave trust, and so important to the best interests of these countries.

Land Debentures.

Secondly.—I cannot concur with that portion of the Report (*c*) which declines to adopt a system of uniform Land Debentures, limited in amount and transferable by simple entry or delivery, but proceeds to recommend an inferior description of Land Debenture, in the form of registered charges unlimited in their number or amount. Recent experiences in Ireland have shown that it is not desirable to confer upon landowners increased facilities for indefinitely encumbering their land, and I retain the opinion that a good system of Land Debentures is essential to any perfect plan for simplifying the title to land and facilitating its transfer.

Some of the advantages of Land Debentures have been already mentioned, along with authorities in their favour (*d*); which are now sustained by the additional evidence of experienced persons, who have well considered the subject (*e*). One eminent witness (*f*) has, however, compared Land Debentures to the "Donegal Debentures," which were neither limited in amount nor with parliamentary title, but were impeached securities, issued by private persons, and were not charged upon land, but upon certain shares in a Canal Company (*g*). Debentures upon land have also been confounded with those French Assignats, which a revolutionary Government charged in vast quantities upon the future produce of the Royal and Ecclesiastical estates, and forced into circulation under heavy penalties, to the utter subversion of public credit. It is manifest that the Donegal Debentures and French Assignats have no resemblance whatever to the proposed Land Debentures, which would be first-class securities, bearing, perhaps, some resemblance to Railway Shares (*h*). The

(*a*) The Right Hon. A. Brewster, to Question 3636 of Select Committee on Court of Chancery (Ireland) Bill of 1856.

(*b*) *See* Note to paragraph 7 of Mr. Scully's Plan in Appendix A.

(*c*) *See* Sect. 29.

(*d*) Appendix A., paragraphs 12 to 19 of Mr. Scully's Plan; and Notes ibid.

(*e*) *See* Evidence referred to in Note to Sect. 29 of the Report.

(*f*) The Right Hon. A. Brewster, Attorney General for Ireland, to Question 35.

(*g*) Ba. and Be. Rep. temp., Hart, p. 146.

(*h*) Professor Hancock, to Question 3.

leading difference is, that Land Debentures, being primary charges for a limited amount, would be far safer investments than Railway Shares, and would not be liable to depreciation, save in a very extreme and exceptional case, such as might never occur in practice (*a*). The more close analogy would be Railway Debentures, which are limited in amount; and, being primary securities, are not subject to depreciation, except such as arises from ordinary fluctuations in the market value of money (*b*). Land Debentures resemble, also, the Debentures issued by the Board of Public Works, under the Irish Land Drainage Acts, and which have been found to work successfully in practice (*c*).

The proposed limit to the amount of the Debentures would not interfere with additional loans to a registered Owner, who could at any time deposit his Certificate of Ownership as a perfect equitable security for further advances.

One advantage of Land Debentures would be, that the landowner could pay off the debt at his convenience and in driblets. Whenever he might have 100*l.*, he could make provision for paying off one of the 100*l.* Debentures, and thus gradually lessen the charge upon his property. Under the present system, the payment of a mortgage of 10,000*l.* is almost an unknown occurrence, which scarcely ever happens to any landowner out of the savings of his property, or otherwise than by some unexpected windfall, or by making new arrangements for obtaining a larger advance of money, in order to prevent a foreclosure of his estate. Upon this subject Mr. Christie, in his evidence before the Registration Commission, thus gave the results of his great experience:—

"It never falls in one's way to see a charge paid off in Ireland. The estate "comes to be sold, or sometimes there is a new mortgage—a large mortgage, "which consolidates all existing charges; but as to any owner of an estate, "by his personal thrift, or even by money which he has otherwise got, except "by a fresh loan, ever applying it to so unprofitable a purpose as paying off "charges, that never occurs. I may notice a fact, which is very observable on "titles in both countries; the extreme rarity of a man who mortgages his "estates ever redeeming. A party who once enters on that downhill course "hardly ever recovers himself."

Indeed it is well known that under the present system the history of any large incumbrance very much resembles that of a snowball. The incumbrance accumulates as it rolls along, from generation to generation, and from age to age, through new arrangements with successive mortgagees, until the whole estate is finally rolled into the Court of Chancery, where it usually melts away.

One of the chief objections usually felt to the investment of money in the purchase of land is, that capital so invested becomes permanently locked up, and its available usefulness thereby much diminished. This objection would be obviated, and the value of all land be greatly increased to its owner, if he could use it at any time as a sort of circulating medium, by possessing a limited power to charge it with transferable Land Debentures. He might thereby from time to time, without expense or delay, raise sums of money to pay his debts, to give portions to his children, to improve or stock his farms, and to meet his current engagements. The principle of Land Debentures could be advantageously applied, for the purpose of effecting a voluntary conversion of all charges that now affect landed property. By converting property in the land into Land Debentures of equivalent value, it would become as transferable as personal property.

The Debentures, or the money value which they represent, might be put into settlement; and there would no longer exist the necessity for having intricate

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(*a*) Same to Question 34. Even in the extreme case there referred to, the Land Debentures, if issued, would not, in fact, have become depreciated.

(*b*) 5 & 6 Vict. c. 89. s. 100., and 8 & 9 Vict. c. 69. s. 9.

(*c*) Mr. Griffith, LL.D., to Question 35; Colonel Larcom, R.E., to Question 36; and Sir M. Barrington, Bart., to Question 35.

Settlements of Land. The land would be represented by these transferable Debentures, and in lieu of a complicated system of acts, deeds, and incumbrances of various sorts, there would thenceforth be substituted the most simple forms of charge and transfer. Property in land would also thus become conveniently distributed, without leading to any minute subdivision or *morcellement* of the land. The proposed Land Debenture would possess more advantages than now belong either to the best mercantile bill of exchange, or to the most secure mortgage. It would combine the negotiability of the one with the stability of the other. It would arouse the capital which lies dormant in the land, and infuse an active vitality into inert matter. These Debentures would be eagerly sought after by bankers and capitalists, as secure investments for their unemployed funds. The only expenses would be some trifling office charges, and some small stamp duties; which, from their frequency, would produce a large income to the State. This species of Revenue would resemble the Post Office charges. It would be another description of public taxation, cheerfully paid for value received.

The great benefits which the industrial classes, as well as the owners of land, have already experienced in Continental countries, through the possession of a simple mode of transferring or charging their landed property, were explained in 1850 by Mr. Stewart, in the following evidence before Mr. Slaney's "Savings Committee:"

"In England dealings in land are a luxury that a rich man may indulge in— "that a poor man cannot indulge in. In Belgium there is a class we should "call stock-brokers, but they are connected with dealings in land, mortgages "and transactions in land; and any person wishing to invest a large or a small "sum, going to them, has no greater difficulty in having the transaction "arranged, safely and properly, than we have in buying stock, and going to a "broker for that purpose. It is just as simple and as easy. In Hamburgh "and in Frankfort all persons, such as our bankers and brokers, if they have "any money that they wish to make available, instead of laying it out as our "bankers would, in the funds, or in Exchequer Bills or other securities, would "invest it in land, which we, according to the present state of the law, do not "consider an available security. The difference is, in fact, quite reversed. A "banker in Frankfort takes this investment in land, as not only the safest and "the best, but because it is most readily turned into money, with less deductions, or less influence from any circumstances. They prefer these securities "to bonds or to bills, or to any other securities that are at all available to them "as men dealing in money. The Government also have a great advantage from "the constant dealings with land. It brings in a stamp-duty, and a much larger "sum is raised in that manner, by way of revenue, than is raised in this country."

Referring to those propositions, which had been shortly before urged upon Parliament by the petition of Irish landowners, the same witness states:

"It is proposed, after an examination of title, to give a parliamentary title "secure against all the world; and then the sum lent is proposed to be divided "into debentures, and those debentures are intended to be transferable. Nothing "can be safer, nothing can be better, and nothing can be more practicable. "Such a system is in force in Prussia, and has been in use for centuries, or one "that is very much the same; and I cannot see why it should not be introduced "with advantage into this country. It is certainly surprising that the landowners in England do not insist on some such machinery, which I believe "might be introduced with even greater safety here than in Ireland. In "Belgium, Prussia, and other parts of the Continent there is a perfectly easy "mode of lending money on land. It is an affair of an afternoon. It will be "found that where the law is simple, the less rate of interest there is, and the "larger the quantity of capital which takes that direction. The landowners

" are able to borrow at a less rate of interest than they are in this country. " In Belgium there is no difficulty in investing money in land as the savings- " bank of the country. Persons there invest their money usually, if they have " a small saving, in land."

In some evidence given before the same Committee, by the eminent economist Mr. John Stuart Mill, he thus expressed a similar opinion with respect to the beneficial effects of Land Debentures in foreign states :—

" In Germany, one of the safest and most usual investment for small sums " is a kind of Land Debentures. The mortgages there were divided into " shares, and the documents which conferred the right to those shares were very " generally in use as investments by all classes, and were found very convenient, " and increased very much the facilities of mortgaging land for its value. They " also increased the value of land."

Upon all this evidence, it is certainly surprising that the landowners of England do not insist on some such machinery as that already possessed elsewhere, and as that demanded in 1850 by the landowners of Ireland in their petition for increased facilities " to sell their estates in a cheap and effectual " manner, and to give simple and available securities for their debts."

Although differing from the Report with reference to Land Debentures, I freely admit that England does not yet possess those facilities for introducing the system which exist in Ireland, through its Ordnance Survey and General Valuation. It should, however, be permissible for any landowner to charge his own land with uniform debentures to a limited amount; although the qualities of such debentures would not be of equal value with those of the proposed judicial debentures.

The Report is, perhaps, also correct in intimating that the subject of Land Debentures does not fall strictly within the scope of the inquiry before the Commission, and it certainly is of sufficient importance to form a distinct question for future consideration. It is chiefly with the latter view that I have again discussed its merits.

Caveats.

THIRDLY.—Whilst concurring with the Report that adequate protection should be provided for all beneficial interests affecting registered land, I think that better and more convenient modes of protection can be devised than through the proposed system of caveats, unlimited in number or duration, and undefined in amount or interest. The probable consequences of such a system are suggested in the answers of some professional gentlemen (*a*), who appear to have closely studied this branch of the subject; and with whom I agree in thinking that permanent caveats, without restraint or limit, whilst insufficient to protect the helpless or inactive, would cause useless expense, would often increase the existing impediments to the transfer of land, and would, probably, come back in effect to a bad registry of assurances. Conveyancers would soon require a general caveat by consent, in respect of every beneficial interest, however minute or otherwise well protected. The caveat would not disclose the caveator's claim, and would absolutely prevent a transfer until removed from the register by some active proceedings, frequently against dead or absent or unknown claimants, and their representatives or assignees. The result would often be, to render the transactions relative to registered land, more expensive and more complicated than similar acts are at present.

There are various modes by which effectual protection could be given to all beneficial interests in registered land, without unduly impeding its transfer.

(*a*) Commissioner Longfield, Q.C., to Questions 17–23; Commissioner Hargreave, Q.C., to Questions 17–24; and Mr. J. B. Murphy, to Questions 17, 18. *See* also Mr. Ayrton, to Questions 18–24.

Other Protections.

That passage in the Report has my entire concurrence, which adopts the suggestion that—"a simple provision, to prevent the devolution of the registered "ownership upon a smaller number of persons than those first registered, will "operate as an *almost perfect* protection to all parties who have or may have "any kind of interest in the registered land, under any settlement of which the "registered owners are trustees." (*a*) This is effected by a short entry of the words "No Survivorship," to intimate that the *jus accescendi* shall not arise.

As a further protection, it could be provided, that an entry of the words "Trust Estate" should denote that the proceeds of any sale must be lodged in court for distribution among the parties interested, as is required with regard to land taken for public purposes under the Lands Clauses Act (*b*). The lodgment of the money could be accompanied by a short affidavit, from both seller and purchaser, of the *bona fides* of the sale for full value; and such lodgment would in all cases obviate any motive for fraud upon the occasion of a purchase; whilst the entry of "Trust Estate" would attach upon the land, notwithstanding any transfer to a mere volunteer.

Other practical protections could easily be provided in special cases, either by order of a Court or by the parties interested in the Registered Land, without encumbering it with numberless caveats.

For example:—

The Certificate of Ownership (*c*), might be retained in the Registry Office, or be deposited in the Court of Chancery, or with a mutual depositee.

The Land might be registered in the name of an Official Trustee (either alone or with other Trustees), whose duty it should be to transfer it on the request of beneficiaries, but so as not to prejudice those under disabilities (*d*).

A temporary caveat or injunction from a Court of Equity might be obtained, pending any necessary proceedings to remove a registered owner, or to establish alleged rights; but persons should not be allowed to enter caveats *mero motu*, nor to retain them except *pendente lite* (*e*).

Should some unforeseen case arise, in which increased protection might be deemed desirable in order to obviate all possible injustice to parties under disabilities, the Court could have power to authorize the necessary measure of protection, in a defined and specific form.

I have been thus precise in mentioning some practical means for protecting all conceivable interests in registered land, because the Plan and Bill submitted by me to the Commission were not sufficiently explanatory in this respect; but simply suggested that (notwithstanding a registration of title) family settlements and trusts might still be sufficiently effectuated through personal confidences, and the inherent powers of a Land Tribunal to grant injunctions and to frame General Rules for giving full effect to its objects (*f*). My apprehension was, that advantage would be taken of any *express* protections to beneficial interests, in order to devise subtle contrivances for attaching the trust upon the title to the land, and thereby again evade any new attempt to convert uses into possession, through a simple measure for the Registration of Title.

Fourthly.—There are some other details, in which, I think, the Report might have been usefully altered.

(*a*) *See* the Report, Section 66.; also Commissioner Longfield to Question 24; and Suggestions of the Right Hon. T. B. C. Smith, M.R., in Appendix.

(*b*) 8 Vict. c. 18; and *see* Section 79. of the Report.

(*c*) *See* Section 75. of the Report.

(*d*) *See* Master Brooke, Q.C., to Question 25.

(*e*) Commissioner Longfield to Question 23; Commissioner Hargreave to Questions 17–24.

(*f*) *See* Pars. 7 and 10 of Mr. Scully's Plan; and Section XIII. of his Bill, in Appendix A.

Partial Interests. It appears to me, that when any land is first brought upon the Registry, partial interests then in existence should be admissible to registration; and that a tenant for life or in tail, as well as in fee, might be safely allowed to apply to have his land registered, in the form I have already suggested (*a*), but with a discretion to the Court or Registrar to grant or to reject such application. It may, however, be more politic to introduce a new system in the simplest form, by confining it to a registration of the fee-simple ownership, subject only to registered charges and leases, as recommended in the Report.

Leaseholds. I think also that a short entry of *every* leasehold interest (though for a less term than twenty-one years) should appear upon the proposed local register of the particular district; so that the purchaser may not have to institute collateral inquiries concerning unregistered documents.

Subordinate Registry. Though I do not agree that a mere "dread of disclosures" (*b*) ought to constitute a valid objection to a general registry of assurances, I am, for other reasons, entirely averse to any such registry, even in the modified form of the "Subordinate Registry" (*c*) suggested in various passages of the Report, which, however, do not affect the plan recommended.

Maps. In Ireland, at least, I consider that the Ordnance Maps ought to be made binding and conclusive, as to the boundaries (*d*) of any land which may be registered with a warranted title, first giving due notice to adjoining proprietors, as is now done by the Irish Encumbered Estates Court.

Proposed Bills. I wish to guard against being committed to the details of either of the Bills referred to in the Report (*e*), as I consider that their provisions might be usefully simplified, though I readily acknowledge the valuable assistance derived from them.

I have felt it necessary to append the above observations to my signature, lest it should appear that by adopting the Report I had abandoned any material portions of my own recommendations, to which I still adhere, with this one qualification, derived from the various discussions upon the Commission, which have now convinced me that, in order to render any plan for a Registration of Title acceptable to the land-owning classes and their legal friends, it will be necessary to provide *express* modes for the due protection of unregistered interests, and that it will not be considered sufficient to give *implied* or inherent powers for providing adequate protection to a Court of Equity or a Land Tribunal.

In conclusion, I may add, that the leading recommendations of the Report appear to be all in the right direction, though the plan may stop short of perfection in some few respects, which, however, will admit of being modified and improved.

But, as Lord Coke might quaintly say:—

NIHIL SIMUL INVENTUM EST, ATQUE PERFECTUM.
EST QUÔDAM PRODIRE TENUS, SI NON DATUR ULTRA.

VINCENT SCULLY.

(*a*) *See* Sections I. and IV. of Bill, in Appendix A.

(*b*) *See* Sect. 20. of the Report.

(*c*) *See* Sections 45., 50., 67. and note, and 89. note.

(*d*) As to Maps, *see* the Evidence of Colonel Dawson and Mr. Blamire; also the answers of Colonel Larcom, R.E.; Mr. Griffith, LL.D.; Lord Dunalley; Lord Monteagle; Sir M. Barrington; Sir R. Kane; Mr. C. P. Brassington; Mr. John Locke; Mr. R. W. White; Right Hon. T. B. C. Smith, M.R.; Mr. James Major, Q.C.; Mr. M. R. Sausse, Q.C.; Mr. R. Longfield, Q.C.; Mr. Willcock, Q.C.; Mr. Burrows; Mr. Hazlitt; Mr. Meadows White, and Mr. Rainy.

(*e*) *See* Sections 83. and 90.

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PROPOSED PLAN AND BILL FOR A REGISTRATION OF TITLE, BY MR. SCULLY.

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SCHEDULE :—A Land Debenture, with Particulars and Map.

Proposed Plan and Bill for a Registration of Title.

Mr. V. Scully.

Mr. SCULLY, Q.C., M.P.

Importance of the Subject.

1. "THE Registration of Title, with reference to facilitating the Sale and Transfer of Land," is a subject which, above all others, most vitally affects the temporal interests of these countries, and of all mankind. I was originally led into its investigation, by an anxiety to arrive at some equitable adjustment of the much-vexed question of landlord and tenant in Ireland.

An examination of that question brought me some years since to the conclusion, that it formed but a branch of the general Land Question, and that its only permanent solution consisted in facilitating contracts and transfers; in other words—Free Trade in Land.*

Origin of Proposed Plan.

2. Having arrived at that conviction my first proceeding was to divest my mind of educational prejudices, and endeavour to discover some simple system of land tenure. When I had at last devised what seemed to me a satisfactory scheme, I next sought for the best mode of adapting it to our existing tenures, so as to induce its speedy adoption in a voluntary form.

Afterwards I discussed the projected system with experienced lawyers, and with intelligent persons of all classes, and having done so, I published my general views upon the Land Question;† giving specific outlines of two distinct plans for registering title to land, the more perfect being similar in its substance to that which I now propose.

A less perfect Plan.

3. The less perfect of those two plans suggested that all registered instruments, and transfers of land, might describe the Owner's interest as belonging to a "Registered Owner Absolute," or a "Registered Owner Limited," or a "Registered Owner Fiduciary;" and the Tenant's interest as belonging to a "Registered Tenant Absolute, or Limited, or Fiduciary."

Details were added relating to that plan, which was also connected with a system of Land Debentures. I shall not, however, trouble this Commission with further reference to a plan which I then stated, and still consider, to be—"an artificial system, neither so simple as might be constructed, nor "conferring so many benefits as would be derived, from substituting for our "present Land System a plan for the Registration of Title better calculated to "develope the natural qualities of the soil, and consequent prosperity of all "persons interested in increasing its value."

Precedents and Authorities.

4. Subsequently I searched through numerous publications, of these and other countries, for precedents and authorities either to sustain or to correct the scheme I had recommended for general adoption, and which at the time I had believed was entirely original in every respect. My surprise was great to find that its most material details were fully fortified by previous experience, either in these kingdoms or abroad; although I failed to discover any Land System combining every advantage, or approaching to perfection in all its parts.

Transfer of Land Bill.

5. Finally, I proceeded to prepare a Bill to facilitate the Transfer of Land; feeling sensible of the wide difference between merely suggesting the outlines of a desirable reform, and presenting it for adoption as a completed measure.

The Transfer of Land Bill of last Session (1853) was framed after much consultation with practical men, and with some eminent lawyers in both countries, who either aided me in its actual preparation, or did me the favor to revise the Bill before its introduction. It has recently been fully reconsidered by me, in reference to suggestions received from various quarters; including some high

* A similar conclusion appears to have been arrived at sixty years since by a distinguished Spaniard, in a profound and enlightened treatise upon the relationship of landlord and tenant and the general land question. See Report on "Agrarian Laws and the Advancement of Agriculture," presented in 1795 to the Supreme Council of Castile by Don Gaspar Melchor de Jovellanos, published in Laborde's "View of Spain," vol. iv. p. 111.

† See the "Irish Land Question, with practical Plans for an Improved Land Tenure, and a New Land System."—Dublin, 1851.

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judicial functionaries and authorities in Ireland, who have devoted much of their valuable time to a careful examination of its provisions. That Transfer of Land Bill embodies my plan for a Registration of Title.

Object of the Commission.

6. The present Commission being appointed "to consider the subject of the "Registration of Title, with reference to facilitating the Sale and Transfer of "Land, and generally to inquire into and consider the advantages and disadvan- "tages attending such a system," it may perhaps be expected that I should now describe every advantage connected with my proposed measure. This, however, I could not hope to accomplish within the limits of these observations; nor shall I now attempt to anticipate all difficulties which may, upon a first reflection, present themselves to intelligent minds. But it is my anxious wish to invite specific objections, in order to have an opportunity of satisfying others as to any matters which shall seem to require further explanation.

I fear greatly lest in attempting to convey briefly my general views on so extended a subject, I may succeed only in rendering them obscure. In that case, I must fall back upon the superior intelligence of the other Commissioners, and refer them to the Transfer of Land Bill, which I now lay before them, and to the additional explanations afforded by my published speech of last Session, on moving the Second Reading of the Bill.

Outline of the Bill:

7. It will be observed that the measure is altogether *voluntary* in its character, involving no compulsion of any sort. It simply permits the Owner of any land to apply to a Land Tribunal*, in order to have his title investigated and placed upon a Register, with the subsequent privileges of a Parliamentary Title to his estate, a power to transfer it by simple Entry†, and a further power to obtain on its credit a limited amount of terminable Land Debentures‡, transferable either by simple Entry like Government Stock, or by simply Delivery like Bank Notes and Bills of Exchange. These great advantages are not attainable through any other plan for a Registration of Title.

No existing interest would be disturbed by the proposed Registration: whilst family settlements and trusts might nevertheless be still sufficiently effectuated, by means of personal confidences, and the equitable jurisdiction of the proposed Tribunal; or by putting into settlement the Land Debentures, like money in the funds or other personalty. Equitable mortgages, or loans from Bankers and others, could also be effected far more easily, expeditiously, and inexpensively, than under the present system.

In order to convenience landowners, and to obviate some objections pressed on my consideration, I have so modified the Bill as to admit of two distinct species of Land Debenture,—the one to be transferable by simple Entry, and the other by simple Delivery: also the exchange of a Debenture of either species, into one of the other class.

Its leading Objects:

8. Although a leading object of my Transfer of Land Bill is to confer direct benefits upon landowners, by enabling them to remove effectually all those intolerable "complexities of interest and uncertainties of title," the measure aims also at attaining indirectly the far higher result of increasing vastly the productiveness of the soil, and material comforts of its population; thereby benefiting all

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* It will be necessary to institute some new jurisdiction, which may be called a Land Tribunal a Land Court, a Land Register, or Land Transfer Office.

† "In almost every country but this, the Transfer of Land is effected in the books of a Notary or Registrar; and you require only the title of the person who sells." See evidence of Mr. Senior at p. 459 of the Lords Report upon Burdens on Land: No. 5422.

‡ There are many precedents for Land Debentures or Certificates of Charge, both in these countries and other parts of Europe. For example:—In ENGLAND; Land Drainage Company's Act, 12, 13 Vict. c. xci.; Copyhold Enfranchisement Act, 15, 16 Vict. c. 51; Land Improvement Company's Act, 16, 17 Vict. c. cliv. IRELAND; Land Drainage Acts, 5, 6 Vict. c. 89. s. 100; 8, 9 Vict. c. 69. s. 9; Farmer's Estate Society's Acts, 11, 12 Vict. c. cliii.; 14, 15 Vict. c. cxliii.; Sir. J. Romilly's Securities for Advances Bill of 1850. CHANNEL ISLANDS; See Duncan's Guernsey, p. 286; Berry's Guernsey, p. 177; Plee's Jersey, p. 251; Le Cras's Laws of Jersey, p. 324; V. Scully on the Channel Islands, p. 64. EUROPE; See "Land Credit Companies of Prussia," by W. Pollard Urquhart, M.P. (1853); Jacob's Tour of Poland (1826); and as to Belgium, Hamburgh, Frankfort, and parts of Germany, see Evidence of Mr. James Stewart and Mr. John Stuart Mill, before the Commons Savings' Committee of 1850. In France also, by a State Decree of July 30th, 1852, a Company called *Société de Credit Foncier*, with a Capital of 25,000,000 francs, was authorized under its Statutes to issue Land Debentures, *Obligations Foncieres*, of 1,000 francs each (Art. 89), payable to bearer (Art. 93), to the extent of one-half the value of the land (Art. 67).

classes of the community, and strengthening the main foundation of the Empire, whilst acting upon the broad policy that—"Free Trade in Land is the true Wealth of Nations."

Beneficial Effects:

9. It is a most idle illusion to imagine that a sound measure to facilitate Transfer of Land can ever tend to its undue subdivision, to give an improper impulse to democracy, or to affect injuriously the aristocratic element of these kingdoms. Such a measure would tend towards producing the opposite results. Should the occasion arise, it will be easy to demonstrate that the free Sale and Purchase of Land can lead to no over-population of a country, or *morcellement* of its farms. It would have a highly preservative tendency, and would stabilitate a territorial proprietory, whilst admitting all industrious classes into either a present or a prospective participation in the ownership of land.* In the words of the Chief Secretary for Ireland—"Its operation would be to increase the value of "land to the Seller, and to give security to the Purchaser. It would also have "the effect of enabling persons to buy small portions of land, and by that "means steadying the minds of the public and encouraging them to make "investments at home."†

Simple Machinery.

10. It is intended to effect these important objects through the most simple machinery for the Registration of an absolute Title, both to the land itself and to charges upon land; with a subsequent capacity for the owner of any registered land or charge to transfer it absolutely, either by simple Delivery or by simple Entry. This inherent capacity is all that appears requisite, in order to place real property in as favourable a position as personalty; for the purpose of enabling the land to discharge, with equal ease, its Succession Duty and other onerous burdens.

The provisions of the Bill have been studiously rendered of the simplest character;‡ vesting in the Land Tribunal, subject however to superior control, the necessary jurisdiction of a Court of Equity, with powers to frame such General Rules as may enable it to carry the objects into full effect. The utter futility of any complicated scheme for the purpose of effecting expeditious transfers of land, if entangled with caveats and other perplexities, or overburdened with official details, was abundantly evidenced by the total failure of the first Irish Incumbered Estates Act.§

Registries, central or local.

11. It is right to inform the Commission that there are some important details which it is fully intended shall, according as public convenience may require, be arranged by the Land Tribunal. For example;—in reference to every plan for a Registration of Assurances or of Titles, it has invariably been a much disputed question whether there ought to be several district Registries, or only one central Office for the whole kingdom. Now I contemplate that, upon the first introduction of my proposed plan for a Registration of Title, one central Office would suffice for each country; but that after some time it may be found expedient, with a view to afford local facilities for transfer, to introduce gradually district offices, connected with and affiliated on the central office.‖

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* See Passy's "Aristocracy considered in reference to Progress and Civilization" (1826); Sismondi's "Political Economy" (1834); De Beaumont's "Ireland—Social, Political, and Religious" (1841); Laing's "Residence in Norway" (1836); Kay's "Social Condition of England and Europe" (1850); also the opinions of President De Lisle Brock, in Duncan's History of Guernsey, p. 308. Instances of a mischievous disintegration of farms, adduced either from a nation of rack-rented tenants-at-will, such as Ireland, or from a country like France, where there arises on the death of each landowner a *compulsory* subdivision and gavelkind of his estate, can plainly have no just application whatever to a country where the landowner possesses full power to devise his property, and where primogeniture also prevails.

† Speech of the Right Hon. Sir John Young on the Second Reading of the Transfer of Land Bill, 29th June 1853.

‡ The Registration of Assurances Committee, to whom the Bill was referred after its Second Reading, stated in their Report that—"The Bill to facilitate the Transfer of Land in Ireland bears "evidence of great labour and care in its preparation, and is distinguished by the clearness and simplicity of its enactments."

§ See the Act of 11, 12 Vict. c. 48. s. 17.—Caveats, distringases, inhibitions, and stop-orders, are only other names for injunctions, which form part of the inherent jurisdiction of Courts of Equity. Distringases upon Government Stock originated with a practice of the English Equity Exchequer. The Act (5 Vict. c. 5.), which abolished that jurisdiction, transferred its distringas practice to the Court of Chancery.

‖ See Lord Langdale's Registration Report of 1850, p. 7.

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In Ireland local offices for the Registration of Title could be most cheaply and efficiently established, at the central town of each Union district; where copies of its Ordnance Survey and Land Valuations are already available, in the custody of responsible public officers. In England, I presume, some similar arrangement could hereafter be contrived.

Simplification of Charges on Land.

12. To any perfect system for registering title and facilitating transfer of land it is absolutely indispensable not merely to simplify the title to the land itself, but also to simplify the title to charges upon land. In order to effect this object the charges themselves must be simplified, which can only be done by affording facilities for an ultimate conversion of all the complicated incumbrances upon land into one uniform security, such as a Land Debenture. Similar views were long since expressed, by the highest practical as well as legal authorities.

Burdens on Land Committee.

13. In 1846 the Select Committee of the House of Lords upon the Burdens on Land stated, as established truisms, that :—

"The marketable value of real property is seriously diminished, by the "tedious and expensive process attending its transfer. Nor is it only in the "transfer of real property that this burden is felt. It is a work of time to raise "money on landed security, and the law expenses incident to the transaction "are a considerable addition to the interest on the sum borrowed. The transfer "of the debt or mortgage is also attended with serious expenses.

Registration Commission.

14. Again the learned members of Lord Langdale's Registration and Conveyancing Commission, in their Report on the subject of Registration, stated that :—

"The experience of the delay especially, which so often attends sales and "transfers, by deterring some persons from making investments in land and "others from lending money on mortgage, materially diminishes the value of "landed property.

"Registration, however effective, is not all that is required to render dealings "with real property easy and inexpensive. It will not remove the difficulties "arising from the complexities of the interests in land, and from the defects or "uncertainties of the law."

Complexity of Incumbrances.

15. Independent of all general or local taxation affecting land, and of the various limitations and trusts to which it may be made subject, the mere money charges are at present most numerous and complex; such as mortgages, legacies and family portions, quit-rents, tithe rent-charges and annuities—sometimes for life and sometimes perpetual,—judgments, recognizances, crown-bonds, decrees of court, orders and rules.

Simplicity of Debentures.

With each of these various classes of charge the real property lawyer is familiar; and it is one of the distinctive features of my plan of Land Reform that they shall all become convertible into the one simple class of charge, consisting of transferable Land Debentures.

There can be no good reason for confining to a Company of private speculators the undue monopoly, conferred by an Act of last Session,* to charge land with transferable Debentures. That valuable privilege should be imparted to every landowner, in a form beneficial to himself and the public.

It would be difficult to over-estimate the advantages derivable from a well-regulated system of Land Debentures.

Proposed limit of Debentures.

16. Cumbersome charges interfere with a free transfer of the land, and also depreciate those charges in value. It is proposed, therefore, that the Land Debentures shall be limited in amount; both with a view to impart to them an immediate marketable currency, and consequent increase of their value, and also in order to avoid those evils of unlimited charges on land, so much complained of in France†, and which contributed to bring so many estates in Ireland into a helpless state of insolvency.

It is well known that all prudent mortgagees desire to confine their advances within fixed limits, and with that object use every precaution to ascertain the relative value of the property.

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* Land Improvement Company's Act, 16, 17 Vict. c. cliv.

† Raudot, in his *Decadence de la France*, states that in 1849 the mortgages upon land in France amounted to about 14,000,000,000 francs, or 560 millions sterling. In Laing's "Observations on Europe," (1850), a similar statement is made. Great social evils have followed from this extreme indebtedness of the landowning class in France, as well as from the *compulsory* sub-division of their land.

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The Transfer of Land Bill proposes, that the total amount of Land Debentures shall be limited to *ten* times the annual value of the land.* This limit might perhaps hereafter be safely enlarged, when it shall be found that, under a sound Land System, the selling price of land has become increased.

Public Valuation.

17. The principle of adopting a Public Valuation, as a sufficiently safe standard of value, has been already tested by past experience in other States.

In Poland Land Debentures have been profitably issued by a public "Land Bank," to the extent of *three-fifths* of the Registered Valuations of incumbered Estates.† The amount issued, from 1824 to 1852, is stated at nine millions sterling; and the realized profit at 800,000*l.*

In Denmark its Government advanced *two-thirds* of the value of large tracts of land to the occupying tenants, to enable them to purchase the ownership of their holdings.

In Hamburgh and in Frankfort money is lent up to *one-half* of the value, upon a Guarantee of Title by the State.‡

In France also money is advanced up to *one-half* of the value, by a Company of wealthy persons whom the State has authorized to guarantee the title, and to issue negotiable Land Debentures of 1,000 francs each.§

From evidence given before other Commissions and Committees it may be collected that in Belgium, Lombardy, parts of Germany, and Switzerland, public valuations are used to measure loans upon land.

In Ireland we now possess an uniform Government Valuation, which regulates all our public imposts on land—Poor Rates, County Rates, and Income Tax.

Example of Debentures.

18. What I suggest is this—that if a person has an estate valued by the Land Tribunal at 1,000*l.* a year, he may apply to the Judges to issue on its credit 10,000*l.* of Land Debentures, of 100*l.* each or any other uniform sum, all being of equal priority, and bearing an equal rate of interest, which should of course be the market interest of the day; but as the security would be of the very first order the interest would be extremely low, seldom above three or possibly even two per cent.

All redeemable incumbrances should be paid off with the proceeds of these Debentures, and the Tribunal would hand over any surplus Debentures to the landowner; who might afterwards use them like bank notes or ready money, to pay his debts, to give portions to his children, to improve or stock his farms, and to meet his current engagements.

These uniform Debentures I regard as quite essential to any perfect system, for conferring upon landowners a complete simplicity of title and facility of transfer.

Revenue to the State.

19. The stamps and fees on such Debentures form perhaps a minor, though not unimportant, item in favour of their adoption; and I may be allowed to suggest that the vast and convenient Revenue, to be derived from numerous dealings in land and in Land Debentures, would soon enable our Government to dispense altogether with the oppressive Duty recently imposed upon all Successions to land.

The official expenses of the proposed Registry would be trifling, as compared with its gross receipts.‖ As a matter of financial economy the system would not only be self-supporting, but, whilst benefiting all classes, the stamps and fees would produce a large surplus income to the State. It would, moreover, save the thousands now expended on maintaining the Irish Incumbered Estates Court and Registry Office, and the hundreds of thousands annually wasted in mischievous costs.

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* A similar principle appears to be indirectly recognized by that provision of the Incumbered Estates Act, under which an incumbered proprietor can object to a sale, in case the yearly interest on the incumbrances does not exceed *one-half* of the net yearly income of the land. 12, 13 Vict. c. 77. s. 22.; and see amendment proposed by Lord St. Leonards, on 28th June 1853, to the "Incumbered Estates Act Continuance Bill."

† Jacob's Tour of Poland (1826). Morning Chronicle of October 30, 1851.

‡ Evidence of Mr. J. Stewart, at p. 30 of the Commons Savings' Committee Report of 1850.

§ See the French *Décrets* of February 28, March 28, and July 30, 1852; and the *Statuts de la Société de Credit Foncier.*

‖ In Belgium the whole official expenses of the *Bureau des Hypotheques* do not exceed five per cent. on the receipts. See evidence of Mr. G. W. Sanders, at p. 13 of the Registration Report of 1850.

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State Guarantee of Title.

20. If each person, on applying for the advantage of a Parliamentary Title and other benefits of the proposed Act, were also to pay a small premium or percentage on the property, a large additional Revenue might be thus obtained; and out of that fund it would be highly politic for the State, considering the public good conferred on the whole country, to supply a Guarantee or Indemnity, in those rare cases where the title might ultimately prove defective. An Indemnity Clause is therefore inserted in the Bill; which, however, is not so necessary in Ireland, where comparative security can be obtained, though at greater expense, through the general Registry of deeds.

The suggestion of a Guarantee for Title to be given, either by the State or by private Insurance Companies, has been frequently made. A "Guarantee Fund" formed a material feature in the projected Genevese Registry.* In Hamburgh and Frankfort there appears to exist a Guarantee of Title by the State, which knows its perfect security, and makes no extra charge for its Guarantee; considering that it derives a large revenue, and many indirect benefits from the constant dealings in land.†

There are some obvious reasons for giving a decided perference to a State Guarantee, both on account of its superior security and the public revenue which the premiums would produce. It is only through a State Guarantee that the land itself could be absolutely secured to its improving purchaser, with an Indemnity to the person whose prior rights might have been superseded by a Parliamentary Title.

Measure to be Voluntary at first:

21. The Transfer of Land Bill ought, in the first instance at least, to be introduced and applied, as to any particular land, in a purely *voluntary* form. Should it fail altogether, no possible mischief could thus ensue. If attended with success, it will then be certain to develope itself throughout the country with sufficient rapidity to supply full employment to the Judges of the proposed Land Tribunal, for a considerable time. Indeed it would be found almost impracticable to establish any complete system for the immediate Registration of indefeasible Titles, to all lands in England or Ireland.‡

Afterwards Universal.

But although, upon grounds of public convenience, it is recommended that the proposed system shall be introduced gradually and in a voluntary form, I quite anticipate that, after some years experience of its beneficial working, it may then be considered expedient to render its application *universal*, as to all land not specially exempted from its operation. Accordingly the Bill is so framed as to admit of this object being hereafter attained, with the utmost ease, by slightly altering its first section, and so as to operate no injustice of any sort; inasmuch as the measure would still continue to retain its purely *prospective* character, and no Parliamentary Title could arise until after a Special Order should have been pronounced under the fourth section.

Were the measure to be rendered universal, we should then enjoy the converse of our present land system, which now only allows settled or mortmain land to be liberated by Act of Parliament; whereas the law ought to be that, unless by special statute, free land should not be fettered so as to affect its title.

Bill confined to Ireland:

22. Upon reference to the Bill it will be seen that, as at present framed, it is confined to Ireland only; where some superior facilities exist for carrying it into immediate operation,—through its universal Registry of deeds, its Encumbered Estates Court, its Ordnance Survey on a six-inch scale, and the Public Valuation of all its lands. It has also been already demanded by the landowners of Ireland.§

Applicable to England.

But every principle of the proposed measure applies equally to England, to which country its provisions might be extended by some slight alterations; and by providing that the Tribunal, instead of causing a copy of its Declaration to be deposited under the second section in the public Registry of deeds, shall either cause a reference to the Declaration to be endorsed on the most recent muniments of title, or the land to be clearly delineated on a general map accessible to the public. Such a provision would effectually obviate any practical inconvenience, which might otherwise arise from the circumstance that under a voluntary system for the Registration of Title two distinct states of the law

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* Evidence of Mr. J. J. Park, at p. 543 of the Second Real Property Report of 1830; and of Mr. J. M. Ludlow, at p. 214 of the Registration Report of 1850.

† Evidence of Mr. J. Stewart, p. 30 of the Commons Savings' Committee Report of 1850.

‡ So stated in the Registration Report of 1850, p. 36.

§ See the Petition of Irish Landowners, presented to both Houses in May 1850.

should, for a time at least, apply to different areas of land in the same country.*

The Irish Incumbered Estates Act † is incorporated in the proposed Bill, and its jurisdiction transferred to the Land Tribunal. That Act was framed by the well known counsel Mr. Coulson; who could, no doubt, easily adapt its provisions to any English measure of Land Reform.

Mutual Land Societies.

23. In legislating for a Registration of Title, it should not be overlooked that any increase in the present expense of transferring a small portion of land would operate as an absolute prohibition of those numerous Societies established under the Benefit Building Societies' Act ‡.

An idea of the great and growing importance of those bodies may be formed from the circumstance that in August 1851 the number of Registered Building Societies exceeded two thousand, and their annual income amounted to four millions sterling. Some of the largest of those institutions possessed incomes exceeding fifty thousand pounds each. There were then about one hundred Mutual Land Societies in full operation, with numerous branches, in which 250,000*l.* had been contributed and paid by 55,000 members, subscribing for 70,000 shares of the ultimate value of two millions. Since that period the number and wealth of those Societies have progressively increased.§

The proposed measure would facilitate all legitimate operations of Mutual Land Societies, whilst it would also enable every industrious person to invest his savings in the purchase of land, without resorting to subterfuges under the Benefit Building Societies' Act.

Solicitors benefited.

24. It may perhaps be not beneath the consideration of this Commission that multiplied dealings in land, would likewise greatly benefit the solicitors of these countries; who would soon realize increased profits, and more real remuneration, from their many small fees as notaries and negociators of numerous sales, than they can now derive from heavy charges for conveyancing or for equity suits. There should always be many instruments and proceedings, concerning even registered land, which would affect the person or the realized fund, though not the title, to the land itself; and for these the services of solicitors must still be required.

Further Suggestions.

25. Should this Commission decide upon adopting my plan for a Registration of Title, it may perhaps think proper to complete the measure by recommending the addition of some provisions, which I have not ventured to introduce; such as a clause conferring upon the Land Tribunal Parliamentary powers, under certain specified restrictions, to enfranchise absolutely any settled or any mortmain lands, for the advantage of all parties interested; or to sanction long leases of such lands; and, in case of a sale or the payment of a fine, to direct that any existing settlement or trust shall be transferred from the land to the fund, in the same manner as is done upon Railway purchases. Also such improvements upon the details of the Irish Incumbered Estates Act as may be suggested by its experienced Commissioners; such as enlarged powers of partition and exchange, a power to sell all incumbered leaseholds and life estates, &c.‖

These, however, are all subsequent considerations, which can only arise in case the Commission shall think proper to adopt the principles of my proposed measure.

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* Evidence of Mr. Coulson, Q. C., before the Registration of Assurances Committee of 1853, Nos. 976, 1071.

† 12, 13 Vict. c. 77.

‡ 6, 7 Will. IV. c. 32.

§ For further details respecting Benefit Building Societies and Freehold Land Societies, see W. Tidd Pratt's "Law relating to Benefit Building Societies," (1850); W. Stone's "Practical Treatise on Benefit Building Societies," (1851); A. Scratchley's "Industrial Investment and Emigration," (1851); V. Scully on "Mutual Land Societies," (1851); and the several numbers of "The Freeholder," a monthly periodical established on 1st January 1850, in connexion with the Freehold Land Societies of England.

‖ See alterations suggested by the "Incumbered Estates Act Continuance Bill," introduced in the House of Lords on 11th June 1853; and the several amendments thereto proposed by Lord St. Leonards, Viscount Hutchinson, (Earl of Donoughmore,) and the Lord Chancellor Cranworth.

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A Bill to facilitate the Transfer of Land in Ireland.

Preamble.

WHEREAS it is expedient to facilitate the Transfer of Land in Ireland: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

On application of Owner, Land may be declared under the Act.

I. It shall be lawful for the Owner of any land in Ireland to apply to the Land Tribunal, herein-after mentioned, to have such land brought under the operation of this Act; and if it appear that it may be expedient to bring the land, or any part of it, under this Act, the Tribunal shall direct Notice to be given to such persons and in such manner as it may deem fit; and shall inquire into the nature of the applicant's Title to the land, and its existing state and circumstances; and shall hear all parties interested, who may apply for that purpose: and, thereupon, if it appear expedient and just to bring the land or any part of it under this Act, the Tribunal shall so declare; and the declaration shall be entered in the books of the Tribunal; and thenceforth the land comprised in such Declaration shall be and remain under the operation of this Act: Provided, however, that, notwithstanding any thing in this Act contained, it shall be lawful for the Tribunal, in and by such Declaration, to exempt specially from this Act, upon such terms and for such period as it may think fit, any estate or interest in the land comprised in such Declaration.

Registry of Declaration.

II. After the making, and before the entry of such Declaration, the Tribunal shall cause a copy of it to be deposited in the Office for registering memorials of deeds, conveyances, and wills; and the same shall be forthwith duly registered in the said Office, in like manner as if it were a memorial of a conveyance of the land by the Owner thereof.

Effect of bringing Land under the Act.

III. After any land shall have been brought under the operation of this Act, no subsequent Deed or Act of Her Majesty, Her heirs or successors, or of any Person or Court, shall have the effect of creating any Incumbrance thereon, save by a Debenture under this Act; nor shall any such subsequent Deed or Act have the effect of creating, out of any Estate in such land, any new or less Estate: but this provision shall not prevent the Transfer, Descent, or Vesting of any Incumbrance, or of the entire of any Estate, or the Merger or Enlargement of any Estate; and nothing herein contained shall prevent any person, who is entered as herein-after mentioned by the Land Tribunal as the Owner of any land, from demising or granting by way of Lease such land, or any part of it, or any Easement therein; provided that one part of the Lease, executed by lessor and lessee in the presence of an attesting witness, shall be deposited with the Tribunal, in such place and manner as it shall from time to time appoint; but every such Lease shall be utterly null and void as against any person who, after the making thereof and before it shall have been deposited as aforesaid, shall be entered by the Tribunal as a new Owner of the whole or any part of the land thereby expressed to be demised, and as against all persons deriving under such new Owner.

Declaration and Certificate of Title.

IV. At any time, and from time to time after any land shall have been brought under the operation of this Act, the Land Tribunal, upon the application of the Owner for the Time being, and after a full Investigation of Title, shall be at liberty to make an Order declaring all existing Estates and Interests in the land and all Incumbrances thereon; and shall cause such Order to be entered in the Books of the Tribunal, in such manner as it may think fit; and every such Entry shall, as regards any Estate, Interest, or Incumbrance appearing thereon, be conclusive evidence against all persons whomsoever, including Her Majesty, Her heirs and successors, of the matters set forth therein; and the Tribunal may at any time grant and issue to the person so entered as entitled to any such Estate, Interest or Incumbrance, a Certificate of his Title thereto, in such form as the Tribunal may think fit.

Transfer of Land by Simple Entry.

V. If any person who is entered by the Land Tribunal as Owner, either solely or together with any other person, of any land, shall desire to transfer

his Estate therein, or if by Descent, Devise, Bankruptcy, Insolvency, Sale Contract, or otherwise, any person shall become entitled to the Estate, or to a transfer of the Estate, in respect whereof another person is so entered as Owner, it shall be lawful for the Tribunal, upon the application of any such Owner or person entitled, to substitute and enter in a Book or Books for that purpose, the person who is to appear as and be the New Owner; and the new Entry shall be in such form as the Tribunal may direct; and shall, without any deed or other assurance, suffice to vest in the person so substituted the land to which it shall relate, for all the estate and interest in respect of which the prior Owner appeared entered as such in the Books of the Tribunal; but without prejudice to any other estate, interest or incumbrance previously entered, or to any lease previously executed and deposited as by this Act provided, or to any Debenture under this Act: the object and policy of this Act being that in order to facilitate the Free Transfer of Land, with an indefeasible Title thereto, the person who may for the time being appear entered as the Owner of any Estate shall represent such estate in the Books of the Tribunal.

Debentures may be charged upon Land.

VI. At any time, and from time to time, after any land may have been brought under the operation of this Act, it shall be lawful for the Land Tribunal, if it deem it expedient and just, upon the application of the Owner for the time being of such land, to charge the same by means of Debentures, transferable by simple entry or negotiable by simple delivery, in the form contained in the Schedule to this Act, or in such other form as may be approved of by the Tribunal, with such sum or sums of money, bearing interest at such rate or rates, or not bearing interest, and payable or redeemable at such time or times, not exceeding *ten* years from the date and making thereof, as to the Tribunal may seem fit: Provided always, that in the case of unincumbered land no Debenture shall be issued for such a principal sum as, either solely or together with the total amount of the principal sum or sums then already charged on the same land by virtue of any other Debenture or Debentures, shall be more than *ten* times the sum which may appear to the Tribunal to be the yearly value of such land, having regard among other matters to any lease thereof made before the land came under the operation of this Act; nor shall there be reserved by any Debenture upon such unincumbered land interest of such annual amount as, either solely or together with the annual interest then already reserved and charged by any other Debenture or Debentures upon the same land, shall exceed *one-half* of its yearly value: Provided also, that if the charge proposed to be created by Debenture is to be puisne or subject to any other incumbrance, the Tribunal shall have regard thereto, and shall estimate such other incumbrance at the full and outside value thereof, and shall so limit the Debentures which it may think fit to issue, that their amount shall be as amply secured as Debentures would be if charged on unincumbered land to an amount not exceeding *ten* times the yearly value thereof.

Priority and Transfer of Land Debentures.

VII. Debentures charged on any land shall have equal priority with each other, but shall have priority over any lease executed after the land came under the operation of this Act; and upon the issuing of any Debenture it may be transferred by the Land Tribunal, either by an Entry in its Books, or by a Memorandum upon the face or back of the Debenture, in such form as the Tribunal shall think fit, to the Owner for the time being of the land charged therewith, or to any Incumbrancer thereon, or to such other person as to the Tribunal, having regard to the rights of all parties interested, shall appear expedient and just; and every such Transfer, either by Entry or by Memorandum, shall vest in the person to whom the same shall be made the ownership of such Debenture and of the charge thereby created; and every Debenture so transferred by Entry, and the monies due or to become due thereon shall thenceforth be transferable by simple Entry in the Books of the Tribunal; and every Debenture so transferred by Memorandum, and the monies due or to become due thereon, shall thenceforth be negotiable by simple Delivery, and be transferable by its Holder from time to time, in like manner as a Promissory Note payable to bearer may be now negociated and transferred; but it shall be lawful for the Tribunal at any time, if it think fit, upon the application of any person entitled to a Debenture of either

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species, whether transferable by Entry or by Delivery, to cancel such Debenture and commute it for a Debenture of the other species.

Punctual Payment of Land Debentures.

VIII. All monies charged, for principal or interest, by a Debenture shall be punctually paid on or before the day or days specified therein for the payment thereof; and every such payment shall be made to the Land Tribunal, or to such person, or into such office, and in such manner, as the Tribunal may appoint; and every such payment shall operate as a full discharge for the sum so paid; and the monies so received shall be paid over to the Owner for the time being of the Debenture, at such place and time, in such manner, and subject to such regulations, as the Tribunal shall direct: and in order to insure Punctual Payment on foot of every Debenture, out or in respect of the land charged therewith, the Tribunal shall be at liberty to impose upon the persons by whom or out of whose estate such payment ought, in the opinion of the Tribunal, to have been made, Fines, by way of penalty, or of additional interest, or otherwise, of such amount, and payable in such manner as to the Tribunal shall seem advisable and just; and such Fines may be levied, either by sale and transfer by the Tribunal of the estates of such persons in the land whereout or in respect whereof such Punctual Payment ought to have been made, or by Writs of Attachment or of Execution, to be awarded against the bodies, or the goods and chattels of such persons, in such form and to be executed in such manner as the Tribunal may direct; and any sums levied or paid in respect of such Fines, may, after providing for the costs and expenses of the levy and proceedings incidental thereto, be applied at the discretion of the Tribunal, towards the expenses of executing this Act, or towards the full indemnity and compensation of any person injured by such want of punctuality of payment, or towards any one or more of such purposes: and it shall also be lawful for the Tribunal, where any sum for principal or interest is due in respect of a Debenture, to enforce immediate payment by sale and transfer of the land charged, or by distress to be made thereon in the name of the Tribunal, or of the Owner of the Debenture; and the Tribunal shall also be at liberty to provide for the payment of all or any such arrears by issuing and transferring, in respect of the lands charged therewith, Debentures, within such limits as to amount and subject to such provisions as in this Act contained in relation to Debentures issued upon the application of an Owner of land.

Debentures barred by time:—

IX. It shall be lawful for the Tribunal, from time to time, to make General Orders regulating the period or periods of limitation, upon and after which any sum due for principal or interest on foot of Debentures shall become barred by lapse of time, either absolutely or upon such terms as the Tribunal may direct; provided such periods shall not in any case be less than *two* or more than *six* years: and in case any Debenture shall be given up to the Tribunal in a mutilated or injured state, it shall be lawful for the Tribunal to cancel such Debenture, and to charge and issue in its place a new Debenture, on such terms and the payment of such fees as the Tribunal may consider just: and in case it shall be proved to the satisfaction of the Tribunal that any Debenture transferable by simple delivery has been destroyed or lost, it shall be lawful for the Tribunal to charge and issue in its place a Duplicate Debenture, marked as such, to be transferable by entry and not by delivery, on such terms and the payment of such fees as the Tribunal may consider just; but without prejudice to the rights of any holder of the original Debenture, by whom it may be afterwards actually produced.

Mutilated or lost.

Payment of an Owner's Judgment Debts.

X. If, after any land shall have been brought under the operation of this Act, any Judgment, Decree, Rule or Order of any Court shall be obtained against a person who then is, or shall thereafter become, an Owner of such land or entitled to any estate therein, it shall be lawful for the Tribunal, upon the application of a Creditor to whom any money shall by virtue of such Judgment, Decree, Rule or Order be due and payable, to raise and levy the amount thereof by sale and transfer of the interest which such person shall at the Time of such application have in all or any part of the land; and to apply the proceeds of the sale, in the first place in payment of the costs and expenses of the sale and transfer, and in the next place in payment of the monies due to such Creditor as aforesaid; and then in payment of any other such Creditor or Creditors, according to the priority of their respective applications; and subject thereto the surplus proceeds of the sale shall be paid,

invested, or applied to, or for the benefit and according to the rights of, the person or persons who would have been entitled to the interest sold, but for the sale thereof.

A Land Tribunal to be constituted.

XI. The Land Tribunal shall be a Court of Record, to be called "The Land Tribunal of Ireland," and shall be constituted as herein-after provided, that is to say;—it shall be lawful for Her Majesty, her heirs and successors, by warrant under the Royal sign manual, to appoint any number of persons, not exceeding , to be Judges under this Act, with such salaries and pensions respectively as the Commissioners of Her Majesty's Treasury may from time to time fix and appoint; not being above pounds a year to the Chief Judge, nor above pounds a year to each of the other Judges: and upon every vacancy in the office of any such Judge, in like manner to appoint some other person to such office; and the said persons, so to be from time to time appointed, shall be the Land Tribunal aforesaid, and shall have a Common Seal; and all acts, matters, and things which the Tribunal, or the Judges thereof, are by any of the provisions of this Act required or authorized to do or execute may be done and executed by any *two* of them: and every Judge appointed under this Act, shall hold his office during good behaviour: but it shall be lawful for Her Majesty, Her heirs and successors, to remove any such Judge from his office, upon the Address of both Houses of Parliament; and no Judge of the Land Tribunal, during his continuance in office, shall practise as a Barrister-at-Law, Solicitor or Attorney, or be capable of being elected or of sitting as a Member of the House of Commons; and every Judge under this Act, before he enters upon the execution of his office, shall take the following Oath, before one of the Justices of the Court of Queen's Bench of Common Pleas, or one of the Barons of the Court of Exchequer in Ireland (that is to say);

"I A. B. do swear, that I will faithfully, impartially and honestly, according
" to the best of my Judgment, fulfil all the Duties of a Judge under any Act
" passed in the seventeenth year of the reign of Queen Victoria, entitled 'An
" Act to Facilitate the Transfer of Land in Ireland.'"

Jurisdiction of Incumbered Estates Court transferred to Land Tribunal.

XII. On the *first day of January, one thousand eight hundred and fifty-five*, all the powers, authority and jurisdiction which by the Act passed in the thirteenth year of the reign of Her Majesty, entitled "An Act for further facilitating the Sale and Transfer of Incumbered Estates in Ireland," are vested in the Court of the Commissioners under that Act shall, by force and virtue of this Act, be given, transferred to and vested in the Land Tribunal, in as ample a manner to all intents and purposes as the same may now be exercised by and are vested in the said Commissioners; and thenceforth all such powers, authority, and jurisdiction, so far as regards the exercise thereof by the said Commissioners, shall wholly cease and determine; and for the purpose of exercising the powers, authority, and jurisdiction hereby transferred to the Land Tribunal, the Judges thereof shall stand and be in the place and stead of the said Commissioners; but the provisions of the fifth section of the said recited Act, for limiting the duration of office of the Commissioners or other Officers under that Act, shall not be applicable to the Judges or Officers under this Act; and, notwithstanding anything in the said recited Act contained, it shall, at any time after the said *first day of January, one thousand eight hundred and fifty-five*, be lawful for any Owner, within the meaning of that Act, of any such land or lease as in the sixteenth and seventeenth Sections thereof respectively mentioned, or for any Incumbrancer on any such land or lease, within the meaning of the said recited Act, and as therein mentioned, to apply to the Land Tribunal for a sale of such land or lease, under the powers and for the purposes of the jurisdiction hereby transferred from the said Commissioners to the Land Tribunal; and thereupon all orders and proceedings, which by the said recited Act might be made, had or taken by or in the Court of the said Commissioners, in relation to such application by such Owner or Incumbrancer, if made to the said Commissioners within the respective periods of three years by the said Sections of the said recited Act limited for the making of such application, may be made, had or taken by or in the Court of the Land Tribunal, upon such application to it by such Owner or Incumbrancer; and any land, which upon such application shall be sold by the Tribunal, shall from and after the entry by the Tribunal of the sale and transfer in a Book or Books for the purpose, be

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and thenceforth continue under the operation of this Act, either absolutely or subject and exempt as in such entry mentioned; and all matters which on the said *first day of January, one thousand eight hundred and fifty-five*, shall be depending in the said Court of Commissioners, shall, by force of this Act be transferred, with all proceedings therein, to the Court of the Land Tribunal, there to be carried on, dealt with, and decided, by virtue of the powers, authority and jurisdiction hereby transferred, in the same manner in every respect as if such matters and proceedings had been originally commenced in the Land Tribunal.

General Powers of Land Tribunal.

XIII. All the powers and authority, which by the said recited Act for further facilitating the sale and transfer of Incumbered Estates in Ireland, are vested in the Commissioners under that Act for the appointment or removal of officers for the purposes thereof, shall belong to and be vested in the Judges of the Land Tribunal for the purposes of this Act, and in order to enable them to institute such central or district offices and agencies as may be required for effecting the objects and policy of this Act; and all provisions of the said recited Act, in relation to salaries of officers and to expenses, shall, so far as they are not inconsistent with the provisions of this Act, be applicable to the salaries of officers and to the expenses under this Act; and all the provisions of the said recited Act, in relation to the framing, printing, circulation or promulgation of forms of application and directions under the said recited Act, or to the making of General Rules, and the confirmation, enrolment and effect thereof, and the laying of the same before Parliament, or to the attendance of witnesses, and the production of deeds, books, papers, documents and writings, and the examination of witnesses, and the administration of oaths, affirmations or declarations, or to the enforcing of orders made under the said recited Act, and the reception in evidence of affidavits, or to the appointment of persons before or by whom affidavits or the examination of witnesses may be made or taken, and the administration of oaths, affirmations, or declarations for the purposes of such examination, or to the powers authority and jurisdiction of the Court of the Commissioners under the said recited Act as a Court of Equity or otherwise for the investigation of title, and for ascertaining and allowing incumbrances and the amounts due thereon, and the priorities thereof respectively, and the rights of owners and others, and for the other purposes mentioned in the said recited Act; or to the sending of cases or direction of issues, and the reference of matters or inquiries; or to the sale of land, and the application and disposition of the purchase-money; or in relation to persons under the disability of minority, idiotcy, lunacy, or coverture; or in relation to the abatement or suspension, costs or expenses, of proceedings under the said recited Act, or to the restraining or removal of such proceedings; or to the indemnity of the Commissioners under the said Act, or the reviewing, rescinding or varying of any order of the said Commissioners, or to an appeal therefrom, and the persons by whom such appeal may be heard and reported upon, or to false evidence; and all other provisions, powers, authority and jurisdiction whatsoever, contained in or conferred by the said recited Act for the purposes thereof, so far as the same are not inconsistent with and may be found useful to effect the purposes of this Act, shall be applicable and be applied respectively to the like matters and things in relation to the Land Tribunal, and to the Judges or any one or more of the Judges thereof, and to the proceedings before the Tribunal under this Act: and any Entry made by the Tribunal under the provisions of this Act shall be construed and regarded as an Order within the meaning of this Section and of the said recited Act: and private, common, and negative Searches for orders and entries, and for leases deposited under this Act, may be obtained in such manner, and upon payment of such fees, and subject to such regulations, as the Tribunal may direct; *and upon the entry of any transfer or the deposit of any lease, or the cancellation and exchange of any Debenture, under this Act, the person applying for such entry or deposit, or for such cancellation and exchange, shall pay to the Tribunal such fees as it may by any General Rule from time to time appoint in respect thereof; and when any estate shall by any entry under this Act be transferred upon a sale thereof, the Tribunal shall receive, in addition to any fee which would be otherwise chargeable in respect of such entry, a further fee equal in amount to the ad valorem stamp duty then chargeable in respect of the consideration for such transfer, if expressed in a*

deed of conveyance upon a sale of such estate; and the Tribunal, upon the issuing of any Debenture, shall in respect thereof charge and be paid by the person to whom the same shall be issued, a fee equal in amount to the stamp duty then chargeable upon a deed of mortgage for securing the payment of a principal sum of money equal in amount to the principal sum expressed by such Debenture to be thereby charged upon any land; and all fees shall be accounted for and paid over to the receipt of Her Majesty's Exchequer in Ireland, and thence carried to and made part of the Consolidated Fund of Great Britain and Ireland. *Mr. V. Scully.*

XIV. If any Entry made under the fourth section of this Act, shall at any time, within twenty years thereafter, appear to the Land Tribunal to have been erroneous, and to defeat or prejudice the estate or interest which any Person, if such Entry had not been made, would lawfully have had in all or any part of the land to which such Entry relates, it shall be lawful for the Tribunal, if it shall think it right and proper so to do, (having regard to the circumstances of the case, and to the opportunities, if any, which such person or those under whom he derives had of opposing or appealing from such Entry, or to any other mode of redress which may have been or may be available to him or them), to award such sum, and upon such terms as the Tribunal shall deem just, as an Indemnity or Compensation, either wholly or in part, for the loss or injury sustained in consequence of such Entry; and the sum so awarded shall be paid by the Commissioners of Her Majesty's Treasury out of the Consolidated Fund of Great Britain and Ireland; and it shall be lawful for those Commissioners to advance to the Tribunal out of the said Comsolidated Fund, such Monies as may from Time to Time be requisite for ensuring punctual Payment to the Holder of any Debenture of the Monies thereby secured; and the said Consolidated Fund shall be recouped for all such advances, out of the monies to be paid into the Tribunal under this Act, by way of fees upon entries and deposits, or of fines in respect of Debentures. *Indemnity Clause. (a)*

XV. In any Act of Parliament, document, or proceeding, this Act shall be sufficiently designated by the expression, "The Transfer of Land (Ireland) Act, 1854:" Short Title of Act.

And in the construction of this Act, and of this section thereof, the following words and expressions have the meanings hereby assigned to them respectively, unless there be something in the subject or context requiring a different construction; GLOSSARY.

The word "Tribunal," or the expression "Land Tribunal," means The Land Tribunal of Ireland constituted under this Act; "Tribunal:"

The word "Judges" means the Judges of the Land Tribunal; "Judges:"

The word "Debenture" means a debenture charged upon Land under this Act; "Debenture:"

The word "Person" extends to and includes a body politic or corporate, whether aggregate or sole, and any public company as well as a private individual, and includes also the assignees of any bankrupt or insolvent; "Person:"

The word "Estate" extends to an estate in equity as well as at law, and to an equity of redemption, and to the benefit of any covenant or contract for or right of renewal; and in the third and tenth sections of this Act, that word includes every estate and interest in the particular land brought under its operation, not specially exempted in and by the declaration previously entered in regard to such land; and includes also any lease, though made after the land shall have been brought under this Act; "Estate:"

The word "Lease" includes an agreement for a lease, and the estate or interest created or agreed to be created by such lease or agreement, in the whole or any part of the land therein comprised; "Lease:"

The expression "Lease in Perpetuity" means any lease or grant for one or more life or lives, with or without a term of years, or for years absolute, with a covenant or agreement in any such cases, whether in the same or any other instrument, for the perpetual renewal of such lease or grant, or with a toties quoties covenant for such perpetual renewal, whether such lease or grant be derived out of the inheritance, or by way of immediate or of derivative under-lease out of any such renewable lease; "Lease in Perpetuity:"

The word "Possession" includes the receipt of the rents and profits: "Possession."

(a) *NOTE.—This Indemnity Clause, and the corresponding addition to Sect. XIII., printed above in Italics, are now introduced into the Bill, as being most useful, though not indispensable, additions.*

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"Owner:" The word "Owner," as applied to any land, includes any person entitled in possession to an estate in fee-simple, or under any grant in fee-farm, or under any lease in perpetuity, and also any person entitled in possession under the provisions of any will, settlement, Act of Parliament, deed, or instrument (except a grant or lease reserving rent) to any estate in tail general or special, or quasi in tail, or as tenant by the curtesy, or for one or more life or lives, or other particular estate thereby created or limited, out of or in any estate of inheritance in fee-simple, or out of or in the estate created or granted by any grant in fee-farm or lease in perpetuity, and any feoffee or trustee for charitable or other purposes, entitled in possession, whether in fee or for such less estate as aforesaid; but no person not being in possession of any land, shall by reason of any estate vested in him by way of mortgage, or for securing the payment of any sum of money, or any annual or periodical charge, be deemed an Owner of such land; and during such time as such last-mentioned person shall not be in such possession the person who would be deemed an Owner for the purposes of this Act, if such estate by way of mortgage or for securing any money annual or periodical charge had not been created, shall, notwithstanding such mortgage or security be deemed such Owner as aforesaid; and in case the person in actual occupation of the land shall not be entitled to be deemed an Owner, within the meaning of this provision, then the person who shall have the first such estate or interest as aforesaid therein, in reversion or remainder to or above the estate or interest of the person in actual occupation, as may entitle him to be deemed an Owner under this provision, shall be deemed the Owner for the purposes of this Act;

"Incumbrance:" The word "Incumbrance" means any legal or equitable charge by mortgage, lien, judgment, decree, rule, or order, crown bond, recognizance, legacy, portion, trust, or otherwise, whereby any sum of money is secured upon or made payable out of any land; and includes a chief or other rent, annuity, or other annual or periodical charge or payment, and also any easement;

"Incumbrancer." And the word "Incumbrancer" means any person entitled to such Incumbrance or to require the payment, discharge or benefit thereof.

SCHEDULE.

N.B.—The words in ROMAN character may be used as a general form. The words in *Italics* and the figures can be altered to suit the special circumstances of each Debenture.

M

£100. PARTICULARS OF A LAND DEBENTURE. **No. 25.**

Date of annexed Debenture	1*st July* 1855.
Principal sum	*One Hundred* Pounds.
Principal due on	1*st July* 1865.
Rate of Interest	*Four* per cent.
Interest payable on	1st January and 1st July.
Charged upon	The townland of *Great Mantlehill* in the Barony of *Clanwilliam* and County of *Tipperary*.
Contents of land charged	678A. 1R. 7P. statute.
Value of land	£750 a year.
Total Land Debentures	45 of £100 each = £4,500, bearing *four* per cent. interest.
Special matters	*The prior charges are,—*
	A mortgage at five per cent. for £1,500
	A life annuity for £50, valued at 750
	A perpetual annuity for £25, valued at 750
	Total prior charges £3,000.
Annexed Debenture transferred to	*James Vincent* of *Merrion Square, Dublin.*
Date of Transfer	1*st August* 1855.
Entries in Books of Tribunal	Land Book, Vol. 5. p. 201 (1855) Debenture Book, Vol. 2. p. 18 (1855).

Entered by _____ _____
Debenture Clerk of Land Tribunal.

No. 25. LAND DEBENTURE. **£100.**

BY VIRTUE OF "The Transfer of Land (Ireland) Act, 1854," the Land Tribunal of Ireland has hereby charged the townland of *Great Mantlehill* in the Barony of *Clanwilliam* and County of *Tipperary*, (as described in the endorsed Map and annexed Particulars,) with this Land Debenture for the Sum of *One Hundred* Pounds sterling, to become due on the *first* day of *July* one thousand eight hundred and *sixty-five*, with interest in the meantime at the rate of *four* per cent. per annum, payable half-yearly, on every first day of January and first day of July, the first payment to be made on the first day of *January* next. WITNESS the Seal of the Land Tribunal this *first* day of *July* one thousand eight hundred and *fifty-five*.

MEMORANDUM OF TRANSFER.

The Land Tribunal of Ireland has hereby transferred the above Land Debenture to *James Vincent* of *Merrion Square in the City of Dublin, Esquire*, with full power to transfer the same by simple delivery hereof. WITNESS the undersigned this *first* day of *August* one thousand eight hundred and *fifty-five*.

Signed by a Judge of the Land Tribunal _____ _____
Countersigned by - - - - _____ _____

Mr. V. SCULLY.

DEBENTURE MAP
OF THE
Townland of Great Mantlehill.
Barony of Clanwilliam.
County of Tipperary.
ORDNANCE SHEET No 60
Contents A. 678. R. 1. P. 7 Statute.
Value E. 750.0.0 a Year.
Scale, 6 Inches to One Statute Mile.
0 40 80 120 160 200 240 280 320 Feet
1 Mile
Little Mantlehill
High Road from Golden to Cashel
Bawnstoolheen
N
E
M
R
S
T
U
V
C
I
J
Day & Son Lith. to the Queen

Plan of Registration proposed by Mr. Wilson.

Mr. Wilson.

Difference of opinion expressed and explained.

The Report about to be made by a Majority of the Commissioners does not appear to me to contain a satisfactory solution of the important and difficult problem which Her Majesty has been pleased to refer to our consideration. Being compelled therefore, although with reluctance and deference, to express my dissent from the conclusions of those with whom I have had the honor to be associated in this enquiry, I feel it to be incumbent upon me to lay before the Commission a detailed statement of the grounds of my opinion.

The proposition of the Majority is to establish a register of fee simples, and to provide for the registration of mortgages and leases; but to exclude from the registered title all the various other modifications of the ownership of landed property which are allowed by the laws of this country. In particular, the Report does not suggest any provision for introducing into the registered title any of those modified forms of ownership which are usually created by a settlement. But to prohibit the registration of title under settlement would incidentally change the nature even of those simpler forms of ownership of which the Register would take cognizance. Title in perpetuity might still be called a fee simple; but Registration would have cut off from it a portion of that power of disposition which in part constitutes the title or ownership now called a fee simple, namely the power to introduce into the proprietorship the limitations of a settlement.

Mr. Ayrton's communication.

It appears to me to be unnecessary, and if unnecessary inexpedient, to change incidentally by a Register Act the nature of the subject of registration. If Title requires simplification, let it be simplified by a substantive enactment: the proper office of Registration is not to alter but to manifest it; to simplify the means by which its true condition may be ascertained.

Mr. Ayrton's communication.

Defective state of the Evidence title.

Mr. Hazlitt's communication.

The object of our enquiry is to facilitate the transfer of landed property; and it is not by any complexity of title, but by the want of proper evidence of title, that the transfer of landed property is impeded. It would seem very absurd, if we were not used to it, that a landowner should have no better means of proving his ownership to an intending purchaser than to copy out the substance of all the old deeds which have been executed in connexion with his estate during the last half century or more; that the purchaser must employ solicitors and counsel to study this historical compilation; and that when it has been fully mastered, and the title has in consequence been accepted, the purchaser should not after all have possessed himself of any direct evidence of title, but only of the materials requisite for enabling a future purchaser to go over the same ground again. It cannot be necessary that Title should be dependent on a species of evidence of which each succeeding dose deposits itself in the system, like a cumulative poison, for future mischief; a species of evidence which must be administered with moderation, under stringent conditions of sale, lest its effect should be intolerable. Nor can it be necessary that the cost and difficulty of proof should, in the case of derivative titles, become prohibitory; and that a vast amount of property invested in leaseholds should be bought and sold on mere trust.

Remediable by Registration of Title.

What is needed in order to remedy these evils is to ascertain Title as a fact, instead of leaving it to be wrought out as an inference. I undertake to show that this may be done by means of a Register of Title: without preliminary enquiry, or interference with existing rights; and without altering the nature of Title, or diminishing or obstructing the powers of disposition hitherto annexed to it.

Principles of Registration of Title explained.

I propose to register Title, or Ownership, as it really exists; without alteration, deduction, or addition. But how is Title, or Ownership, to be ascertained for the purpose of registration? In several valuable communications with which the Commission has been favoured, it is assumed that the only evidence of title is the documentary evidence afforded by the title deeds; and that registration of title can therefore only mean registration of title deeds. That

Mr. Wilson.

registration of title must include registration of title deeds, I admit and maintain; but there is another species of evidence to which documentary evidence is relative and subordinate.

For the subject of Title is not an abstraction but a fact. Property consists in the enjoyment of something material by the proprietor, in exclusion of all other persons. Now, as this exclusion would not be acquiesced in unless it were apparently rightful, the open and undisturbed possession of the proprietor is evidence of a general admission, and therefore of the reality, of right. If a man offers a watch for sale in a shop, we assume that he is entitled to sell it, because if he had stolen it he would have concealed his possession of it; he would not have put it into his window to be seen by the police. But if possession is evidence of title to a thing which a thief could carry away in his pocket, much more is it evidence of title to an immovable subject of property, such as a field or a house. Moreover, the title thus manifested by possession is, in both cases alike, a complete and perpetual title. This may seem at first sight to be a bold proposition, but it can be proved nevertheless. For if the possessory title to land is not a fee simple, what is it? Does the presumption of ownership wear out, does it not strengthen itself, by lapse of time? Does it terminate with the life of the possessor? The title to which his heir succeeds is at least not weakened, if it is not now confirmed, by the descent. We thus find in the title to landed property *an apparent ownership in perpetuity, existing as a manifest fact prior to any examination of documentary evidence confirming or curtailing it.*

A little more than three centuries ago this apparent ownership was the most prominent feature in the title to landed property. Our old law books are full of it. But if, as I have maintained, the presumptive inference of a rightful proprietorship from the fact of appropriation is a principle inherent in the nature of Property, to what cause shall we attribute its loss of its ancient influence? The vicious legislation of a former age has done us the twofold injury of depriving us of a benefit and concealing the loss. The Statute of Uses neutralized the effect of the natural possession, by setting up a fictitious parliamentary possession in competition with it; and this very derangement of the evidence of title has tended to confirm and perpetuate itself, by confining attention to that portion of evidence which alone has remained operative; namely to the documentary evidence contained in those acts or circumstances of ownership which we call title deeds. It would be necessary, I think, that a Register of Title should counteract these effects of the Statute of Uses, and should restore the Possession to its natural place in the evidence of title.

Registration of the Possession or Freehold to be the basis of the Register of Title.

I propose, in short, to *register "the Freehold"*; and, as that name is significant and well understood, I gladly retain it as suggestive of a relationship between the modern register and the simple philosophy of the Common Law.

The possession of a tenant for years the possession of the freeholder.

"The possession of a tenant for years is the possession of the freeholder." An adherence to this ancient maxim would be convenient, indeed necessary; nor would this involve an abandonment of principle. For it may be assumed that Registration would put an end to the creation of merely formal terms of years; and as between landlord and tenant either party may be considered as the possessor, because each derives a present benefit from the land. Possession does not mean mere bodily occupation, as by a bailiff or a laundress; but rather the present exercise of a beneficial proprietary right. In this sense, the proprietor to whom the land yields a rent, perhaps a rack rent, and who is armed with summary remedies for enforcing payment of it, is at least as well entitled to be called the possessor as the farmer through whose intermediate agency the rent is produced and paid.

The Share Register of a Railway Company a precedent for registration of possession.

I have endeavoured to connect my proposition of a registered possession with a leading principle of the Common Law. Can any modern precedent be quoted in favour of it? I think one may be found in the register of title to the shares in a Railway Company.

The title of the shareholder is indeed an invariably perpetual title, but the registration of it is not directly expressive of its quality of perpetuity. For registration in perpetuity would have a perpetual operation without being repeated, whereas the shareholder's executor or transferee must go through the process of registration again. The incoming shareholder is in fact only admitted by registration to a place in a succession of persons, each in his turn recognized by the Company as the lawful holder of the privileges belonging to the shares.

When by death, transfer, or other cause, a new person becomes entitled to receive dividends and to vote at meetings, a new entry expressive of this change is made in the register, before the new proprietor is permitted to act as a shareholder. It appears, then, that the effect of each entry in the register is to put a new proprietor into possession. Registration of a transfer, like the indorsement on a feoffment, is a memorandum of delivery of possession.

Effect of the proposed Registration of the Freehold.

To return to the Registration of the Freehold. The Freeholder is, as I have shown,—in truth and in fact and not by any fiction of law—the apparent owner in fee simple. His transferee becomes apparent owner in fee simple in his stead: his death transmits to his heir or devisee a similar title. Registration of the Freehold would express this state of things by suitable entries. The registered freehold would be an ownership in fee simple, apparent only and therefore liable to interruption, but in the meantime freely transferable and transmissible.

Land would thus stand registered in the name of the freeholder: and (after the lapse of a period of transition) the account opened in the Register for the freehold title would refer to the particulars of every registered qualification of the freeholder's apparent ownership. Registered qualifications of the freehold would not impede the transfer of the freehold, but would bind the freehold in the hands of the transferee. Subject only to registered qualifications, a transfer of the freehold (after the lapse of a period of transition) would be a transfer of the fee simple, with an indefeasible parliamentary title.

A Register thus constituted would be a simple record of facts. It would not introduce any new principle, except the obligation to register.

Equitable registration of qualifications of the Freehold.

In order to give effect to a Qualification of the Freehold, a Notice of it might be introduced into the register. The registered notice might consist of an original document; or of a copy, abstract, or extract; or of a written statement of a fact or of the effect of a document. I shall have occasion to consider separately, in another part of this statement, the effect of notice extrinsic to the Register.

Legal registration of qualifications of the Freehold.

Registration of a Notice would not divest the freeholder of any part of the legal property in the land, although the notice would infallibly bind the legal property into whosever hands it might pass. But the Register would have the further capacity of admitting a derivative title into the legal proprietorship. The freehold might be qualified by the introduction of qualifying words into the description of the proprietorship, instead of by imposing a trusteeship on the person of the proprietor. The freeholder would then be the independent proprietor of a freehold curtailed by the deduction from it of a portion of the interest commonly included in the freehold; while the portion of legal interest thus deducted from the freehold—a lease, or a mortgage, or whatever the derivative interest might be—would appear upon the register as a substantive though subordinate legal title, capable, like the freehold, of legal or equitable qualification.

Certification of registered Titles.

Every title and every notice of title admitted into the register would be represented by an Official Certificate. The Certificate of a legal title would declare the proprietorship of the title certified, with its qualifications, if any, at the date of the certificate; and a renewal of the certificate might at pleasure continue the information to a later date. And as transfer of a legal title would be effected by endorsing the certificate and returning the endorsed certificate into the register in order that a new certificate might issue in favour of the transferee, a deposit of the certificate would, by locking up the power of legal transfer, create a valid and secure equitable title without registration of the deposit.

Effect of an unregistered deposit of the Certificate.

The distinction between legal and equitable rights a real distinction.

To recognise a distinction between rights admitted into the legal proprietorship and rights only binding on the person of the legal proprietor would be to "take the system of real property law as it stands and adapt the scheme of "registration to it."* Nor is this distinction an unreal one, although the separation of the legal and equitable jurisdictions may have given to it in this country an undue extension and an artificial form. Registration might derive from it the aid of a natural principle of classification, on the footing of a *gradation of rights*: a gradation of which Registration itself would become the regulating principle. For, after the establishment of the register, the superiority of the legal title over the equitable title would no longer be dependent on peculiarities of language in the instrument of transfer, but would result from the admission into the register of the instrument of transfer, in that capacity. The mere

Its bearing on Registration.

* Evidence of Mr. Hayes before the Real Property Commissioners. Appendix to Second Report, page 359.

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signature of the instrument of transfer—a short printed form endorsed on the certificate of title—would divest the transferor of his beneficial or equitable rights, and vest those rights in the transferee: but the filing of the transferred certificate in the register, and the consequent issue to the transferee of a new certificate in its stead, would superadd to the transaction of transfer, effected privately between the parties, a further and distinct and superior act, not of the parties but of the State, converting an equitable title into a legal title by *granting investiture* to the transferee of the rights which his acquisition of an equitable title had conferred upon him.

The plan here proposed is a developement of the theory approved by the Majority.

This principle of recognition, or investiture, or affirmative registration, is the basis of the system about to be proposed under the sanction of a Majority of the Commissioners. My objection to that system is founded on its exclusion from registration of every interest in landed property to which the principle of affirmative registration is inapplicable. All kinds of rights are to stand before the Register on a footing of equality: whatever is registered is to be a part of the legal title; whatever is not registered is not to be a part of the title at all. The power of legal disposition is to be fitted and fastened to the register, instead of expanding, as heretofore, with the growing exigences of society; and the transfer of the registered title must be clogged with caveats and inhibitions, for the protection of unregistered rights.

In proposing to add to the system approved by the Majority a subordinate machinery for notifying on the register such rights as cannot conveniently be admitted at the time into the legal proprietorship, it is satisfactory to me to feel that I am not expressing a disapproval of the basis of affirmative registration approved by the Majority, but only proposing to work out the principles of registration more completely, and to anticipate and remove objections calculated to impede the accomplishment of the great object in view—*the abolition of retrospective investigation of title.* And now, without further preface, I will proceed to describe my plan in detail, beginning with the

Registration of the Land itself.

A public Map to be provided.

Here at least we have something tangible to deal with. It may be difficult to ascertain the proprietorship, but it is not at all difficult to make a map of the land. We have maps for tithes, for parish rates, for inclosures, for public works. There is to be a new Government Survey, it is said, on an enlarged scale, with a direct view to the registration of landed property. We have private maps of all kinds; maps of districts and estates, maps on conveyances and even very commonly on leases. And it has been proved before the Commission that the expense per acre of revising a map, or even making a new one, would be very small.

Evidence of Mr. Blamire and Lieut.-Colonel Dawson.

Of course I cannot deny that the expense of mapping the whole country would amount to a large total sum; but this total would necessarily be spread over a period of several years, and would be very much less than the aggregate of expense which might be saved by the map to the landed interest. It costs more to make a railway than to keep up a road, yet railway travelling is economical as well as convenient. Nor is that facility for instant and rapid motion which the new mode of transit has conferred upon the whole community an inconsiderable benefit even to those members of the community who may happen for the moment to be in a "state of rest."* But whether we are or are not prepared to face the expense of making a public map, it seems to be vain to attempt to register title without one.

*Mr. Goodeve's letter to the Lord Chancellor (referred to in his communication to the Commission).

The Map cannot be dispensed with.

"Without a map," says Mr. Warner, "there might be several registered owners at one time of the same land."* Now it is to be remembered that Registration of Title means something more than registration of an assertion of title by the claimant. It must include some kind of recognition by the State of the actual existence of title, certainly or presumptively. Is the State then to give its sanction to several competing titles to the same thing? How is the true proprietor to detect the spurious titles? He may himself have described his land on the register by its dimensions and boundaries; but Mr. John Doe, having registered a conveyance containing general words of description, such as "all other, if any, the lands and hereditaments of Richard Roe" in such a county, presently asserts that the land specifically registered is included in this general description. The deed which contains the general words was executed

*Mr. Warner's communication.

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before the passing of the Register Act, and must, therefore, be construed according to the law in force at the date of its execution. Nor do I see how any provisions of the Register Act, or any rules which might be promulgated under its authority, could prohibit, even prospectively, the expression of private transactions by general words. What precise degree of generality is to be the measure of illegality? Are the words "more or less" to be excluded from a statement of dimensions? May not a reference to occupation dispense with an exact description of contents and boundaries? And if a description relative to occupation be permitted, on what principle can a description relative to ownership be forbidden? If occupation or ownership may suffice to identify the boundaries, why not to identify the land bounded? If a landowner has a sudden and urgent occasion to enter into a binding contract, capable of registration, at some place where he has not the means of referring to his title deeds or to a plan of his estate, why should he not be permitted to bind himself by words of description which, though general, contain a clear expression of his meaning? I am here combating a theory which proposes to dispense with an authoritative description of the land. Now if the Law does not itself undertake the duty of description, how can it refuse to give effect to any mode of description sufficient to identify the thing described? If a specific description is only required for the purpose of ascertaining the subject dealt with, a general description which fulfils this condition cannot in consistency be rejected.

Or let it be supposed that there has not been any generality of description. The Registrar sees before him an evident and undeniable duplication of title to the same land, specifically described in two competing conveyances, presented, successively or concurrently, for registration. What is the Registrar to do under such circumstances? Is a ministerial officer to decide a question of right, without investigation or appeal, by refusing registration to one of the claimants? And when the Law has sanctioned several inconsistent titles, how is it to decide between them? On the mere ground of priority of registration? Such a rule would bear hardly on the purchaser who has given credit to the registration of one of the later titles.

Again, how is a person who has a claim against a registered piece of land to find the land on the register, unless it be indexed by reference to a public map? I will not ask whether he is bound to find out all the registered titles, but how is he even to make the most general enquiry about the land in which he is interested if the only index to the register is a list of names? The land which he is looking for may have been put into the name of a trustee for the very purpose of defeating his search. Now if this unknown trustee, in whose name the land has been registered, sells the land and transfers it on the register, the right of the claimant is gone; for it is the very object of registration to protect a transferee for value against unregistered titles. Is the Register then to withhold from the claimant an opportunity of interposing his claim before a transfer takes place? Shall he not even be permitted to register the *lis pendens* in which he is claiming protection from one of the superior courts?

Or let it be supposed that an estate is offered for sale as *unregistered* land. A purchaser must in this case ascertain the fact of non-registration, for if the estate has been registered the ordinary mode of conveyance will be a nullity. But, unless there is a public map to refer to, how is he to learn whether the land has been registered or not? If it be answered that a sale ought not to take place without previous registration, it must then be admitted that to dispense with the public map will make registration compulsory by making unregistered land inalienable.

I have heard it suggested that the Registrar might by degees compile a map-index from the private maps and descriptions lodged in his office, with the aid of such general maps of the locality as might be within his reach; and it must in candour be admitted that some such process of combination appears to have been adopted in Sweden.* But if a map-index is needed as a result, it is needed as a commencement; for the title first registered has at least as much right to be indexed as the title last registered. There is no necessity for immediate legislation; and if, in the present state of opinion, the cost of a map is an obstacle, as it reasonably may be, to the establishment of a register, we shall, as it seems to me, better advance the cause of Registration by waiting the effect

*Appendix to Second Report of Real Property Commissioners, page 166.

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of further discussion, than by a hasty and vain attempt to produce effective results with inefficient machinery.

The register to be applied at first to one county, for instance, Kent.

The best mode of introducing the register would be to begin with some one county, already provided with a large proportion of first class tithe maps, and conveniently accessible in point of distance from a Metropolitan Register Office. I proposed to the Registration and Conveyancing Commission to begin with the county of Kent, and to map the whole county compulsorily.

The Mapping may be either compulsory or voluntary.

If the compulsory mapping of a county were thought objectionable, it would be sufficient to follow the precedent of the Tithe Commutation Act,* by allowing each parish in a selected county or larger district to map itself, at its own expense, on the application of some defined proportion of its landowners.

* 6 & 7 W. 4. c. 71.

The Map to be divided into sections.

Whether the mapping were compulsory or voluntary, it would be necessary to divide the Map into sections, in order that the numeral designations of the several lands contained in it might be kept within convenient limits. For every portion of land which is distinguished by material boundaries would be designated on the Map by a distinctive number, and it is evident that very high numbers would be inconvenient.

Generally into parishes with occasional subdivisions.

I propose that the Map should, in general, be divided into Parishes, with subdivisions in the case of a very large or densely peopled parish, and with some convenient provision for extra-parochial places.

Boundary fences.

The Map would be only a picture of the material boundaries existing upon the land. In laying down a boundary line, the Map would not ordinarily appropriate the fence to the land on either side. But the right to the fence, if admitted or otherwise ascertained, might be shown upon the Map by shading the boundary line on the one side or on the other.

The application of the Map to a variety of purposes would ensure its careful supervision.

The Map ought to be made as extensively useful as possible. It might be applied to the purposes of parochial assessments, and agricultural statistics: perhaps it might supersede the Tithe Map. Possibly a valuation founded upon it might serve as a common basis for every kind of local and national taxation on land, and even for professional remuneration. I am not wandering from the subject; for to extend the use of the Map would afford the best security for its careful supervision.

Book of Reference.

There would be a "Book of Reference," similar to that required by the standing orders of Parliament from the promoters of a railway bill, stating the particulars of the several lands by reference to their numeral designations upon the Map.

Appendix to Report of Registration and Conveyancing Commission, From C., page 248.

As the Report of the Registration and Conveyancing Commission is in the hands of each of the present Commissioners, I may be permitted to refer to the Appendix to that report for the Tithe Map of the parish of Graveney in Kent and for a Book of Reference to it, being Forms A and B of a set of forms which I had the honor of presenting in 1847 in illustration of my views.

Plan of the Register Office.

I may also at the same time refer to a plan which I then presented for a Metropolitan Register Room for the County of Kent, arranged in alphabetical compartments, like the transfer rooms at the Bank of England, thus—"Compart- "ment for parishes A to C—Compartment for parishes D to F, &c.," with a separate "Compartment for the County"—viz. for the registration of titles extending into several parishes.

Appendix to Report of Registration and Conveyancing Commission, page 251.

The Map and Book of Reference to be exhibited in the parish for inspection.

The Map and Book of Reference would be subjected to examination "at some "convenient place within the parish," and any objections made to them would be considered and determined on the spot, according to the principle laid down by the 51st Section of the Tithe Commutation Act.

The Map to be lithographed for sale.

The Map would be lithographed for sale.

Periodical revision of the Map.

It would be revised and corrected at convenient intervals, perhaps every 10 or 15 years. The corrected Map would be submitted to local inspection, and copies of the altered portions of it would be sent round by post to the registered proprietors of the lands affected by the alterations.

Subdivision of registered lands.

In the event of a registered piece of land being subdivided, and of its being desired to register the subdivision immediately, a Sub-map would be registered (according to a practice in common use at the Tithe Office) retaining the original numeral designation of the land, but adding letters of the alphabet to distinguish the new divisions of it—thus 28^a 28^b 28^c. I beg to refer to the Appendix to the Report of the Registration and Conveyancing Commission* for a sub-map of this kind. The subdivisions would of course be introduced with substantive numbers into the public map on the occasion of the next revision of it.

* Page 261.

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The date of the Map to appear on the printed forms used in the Register Office.

I may here mention that all risk of confusion between the different editions of the public Map would be avoided, by expressing on every printed form used in the Register Office the date of the map to which it had reference. It may be observed that all my certificates and other forms printed by the Registration and Conveyancing Commission contain as a part of the printed form the words "Survey of 1847." A document bearing such a mark upon it would, if returned to the Register Office fifty years afterwards, connect itself immediately and certainly with the Map under which it issued; and the registered lands could then be identified without difficulty in the later editions of the Map. The date of the returned document might indeed connect it with its proper map, but not so simply in any case, nor perhaps quite so certainly if the document happened to have been issued about the date at which a new edition of the map was coming out.

Registration of the land itself would be followed by registration of "the "present actually existing ownerships and interests*" in the land; and first of all by the

*Mr. Christie's communication.

Registration of the Freehold.

The first act of registration necessarily a judicial act.

At this point I have the satisfaction to agree for a moment with the Majority. I propose, as they do, to begin the register with an entry to the effect that a given piece of land is owned, or held, or represented, by a given person. We differ as to the meaning and conditions of this first entry, but are unanimous as to the fact that an entry must be made registering the land in the name of a person.

Now this is a judicial act of no small importance. For although an erroneous entry may not be final, it imposes on an adverse claimant the burden of removing it. The remedy of the adverse claimant may be perfect; but the person registered is relieved by the register from the need of a remedy, and has only to hold what he has got.

Mr. Joshua Williams' communication.

"According to the first principle of justice," as Mr. Joshua Williams has well observed, "no judicial act ought to take place, unless in the presence of the "parties interested or in their wilful absence after due notice." Registration ought then to be preceded by such a notice as will procure the attendance or involve the default of the unknown persons whose interests may be affected by it.

Registration to be commenced by local proceedings according to the practice of the General Inclosure Act.

The case only admits of a general notice, but this may, I think, be rendered sufficiently effective by holding meetings "in the gate of the place" (if I may without irreverence refer to the Old Testament as a historical authority) so as to ensure local notoriety. The practice of the General Inclosure Act—the result of an extensive and long-continued experience—might be followed almost without alteration. I will copy out the marginal notes of some of the sections, merely altering the titles of the officers employed—"*Assistant Registrar to hold meetings—Claims to be delivered in writing—Statement of claims to be deposited for examination—Claims to be heard and determined by Assistant Registrar, subject to appeal to Registrar—Titles not to be determined by Assistant Registrar or Registrar.*"

General Inclosure Act, 8 & 9 Vict. c. 118. ss. 46. 49.

At a temporary Local Court held in the parish, after ample public notice, an Assistant Registrar would register the Freehold of lands within the parish.

An undisputed claim to the right of being registered as freeholder would be allowed on proof of the mere fact of the claimant's possession.

If the fact of possession were disputed by a counter-claimant, the Assistant Registrar would adjudicate upon it, without enquiring into the title. He would register the wrongful possessor, in preference to the dispossessed proprietor. But if the possessor were proved to be a tenant for years, or at will, or at sufferance, his possession would be treated as the possession of the freeholder in remainder or reversion; according to the ancient maxim above referred to. Registration of the Freehold would, in effect, register Title; for Possession manifests an apparent title. Yet the registered freehold would not be or become anything more than a registered possession. The right to the freehold or possession might always be contested by a proceeding in the nature of an *ejectment;* viz., by an application for a judicial order to strike the freeholder's name out of the register and to insert the applicant's name in its place.

Unclaimed lands to remain over for registration in London.

The local proceedings being considered as a notice to all the world, individual cases of unclaimed lands might remain over for subsequent registration in London. Any application for this purpose would be taken into consideration in London, on proof of some local advertisement or other prescribed local notice,

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and of a special notice to any person who should have entered a caveat in the London office.

Important bearing of the Register on the Statute of Limitations.

Although the registered freehold would be only an apparent ownership, it would be co-extensive, presumptively, with the fee simple. Therefore the registration of the freehold would be an assertion of title adverse to all other titles, whether in possession or in remainder or reversion. Titles in remainder or reversion, being thus interrupted by the Register before coming into possession, would be provided by the Register with *a new species of action* adapted to their condition; namely with a process for introducing into the Register a present assertion of a title yet future, in reduction of the apparently complete title conferred upon the freeholder by the registration of his possession. Every kind of title being thus converted by the Register into a title capable of immediate assertion, the period of limitation fixed by the Statute of Limitations might, without any real alteration of the existing law, be made to run against every kind of title from the date of the registration of the freehold; and the lapse of a period of 40 years from that date would then, according to the existing periods of limitation, ensure the destruction of all unregistered claims.

3 & 4 W. 4. c. 27. s. 17.

The periods of limitation to be shortened.

But it would in my opinion be absurd to postpone for 40 years the full benefit of registration, by a servile adherence to the existing periods of limitation. Surely it would not be unreasonable to expect a person free from disability to register his rights within the time allowed for recovery of a debt, namely six years. I mention this period because there is an authority for it, but am not sure that it might not be safely and advantageously shortened. A person under disability should be allowed some moderate period, say two or three years, from the removal of the disability: and some extreme period must be fixed after which the register will be in full operation against all the world; say 20 or perhaps 25 years from the date of the registration of the freehold.

Effect of default in registering qualifications of the Freehold.

It should be mentioned that default in registering would not destroy the personal obligation of any person bound to give effect to a claimant's right; though it would preclude any enforcement of the right against the land itself, in the hands of a person who had purchased it for valuable consideration and without notice after the lapse of the period within which the claimant's right ought to have been registered.

Digression on Insurance of title.

In dealings with goods on board ship it is customary to accompany the bill of lading with a policy of insurance, and the two instruments together make up a secure title notwithstanding the risk of shipwreck. On a similar principle, it might become the practice, in dealing with land for commercial purposes, to insure the registered title against unregistered claims. The process might be a very simple one. The title proposed for insurance would, we may suppose, be presented through a solicitor or other agent, on whose known character a prudent Insurance Company might place that large measure of reliance which is customary among commercial men, and without which commercial business could scarcely be carried on. On calling with the title deeds, the agent, accompanied perhaps by his principal, would be introduced to a Conveyancer of competent ability, belonging to the staff of the office, who would compare the registered title with the parcels in the last purchase deed, and would look generally into the other documents. A clerk might be sent to Chancery Lane to search the register in the Common Pleas Office; and the policy of insurance might, in a simple case, be issued on the day following that on which the title deeds were lodged. A very low rate of premium might suffice for the insurance of a *non-hazardous* title, without special charge for the inspection of the deeds: which would be put away in a fireproof room, and might never be asked for again; though it would be a part of the contract that a future purchaser might inspect them on application, and obtain copies of them at his own expense.

Insurance of Title by Government would not in my opinion be expedient. Instead of the cheap and expeditious practice which I have sketched, there would be a long abstract of title to make out and to copy and to compare with the deeds, and a reference of it to a Government counsel; who would read it, in its turn, with a degree of deliberation becoming the solemnity of the occasion; and, in a month or two, if the title were absolutely free from any semblance of defect, the proprietor might call at the Register Office for the certificate of approval, and would have a long bill to pay for it. But how if the title were not absolutely free from defect? Is the Government, knowing the existence or possible existence of an interfering right, to receive a premium, that is to say

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a bribe, as the price of an engagement to conceal the truth and to oppose the power of the State to the enforcement of the known but suppressed claim if it should happen unluckily to be brought forward? Or is the title to be approved *minus* the defect, in order that its weak point may thus be conveniently discriminated for the information of persons on the look out for opportunities of extortion? Or is a total refusal of the certificate of approval to certify in effect the ascertained badness of the title, as the result of a Government investigation of it? In making a contract with an Insurance Company any defect in the title might be discussed privately and compensated by an increased rate of premium, and the policy might be so framed as not to disclose the rate of premium; which however could always be shown, if it were desired, by producing the receipt for the premium. But no Government office could be allowed to deal with the rights of absent parties in this way.

It has been proposed that the certificate of approval should have a more specific effect than that of a private contract of insurance: that it should not merely indemnify against pecuniary loss, but, like the conveyance of the Commissioners of the Incumbered Estates Court, should confer a parliamentary title to the land. Now, assuming a most minute and cautious investigation of a title, by counsel and solicitors of established reputation; an apparent completeness of the evidence in its favour, and its absolute freedom from any appearance of defect; assuming also a reservation to any and every claimant, who might possibly after all turn up, a right of action against the Government for the recovery of all damages occasioned to him by the destruction of his title—under these conditions, I will not presume to say that an immediate grant of parliamentary title might not be practically innocuous, although theoretically indefensible. In other words, an immediate grant of parliamentary title might be harmless in a case where it would be needless: for such an investigation as has been supposed, with the result supposed, might of itself relieve a reasonable purchaser from an apprehension of losing the specific subject of his purchase; and if in submitting the title to inspection he were not looking to his own specific security, but rather to an increased facility for intended future dealings, of a kind likely to be impeded by such an examination of title as a purchaser desirous of specific security would be willing to give—that is to say, for dealings requiring security, not because of affection towards a specific piece of land, but for the sake of the money which the land costs—dealings, therefore, bearing a pecuniary value, and capable if defeated of a pecuniary compensation—then such an object of relative security might be attained in a sufficient degree, without deviation from sound principle, by a private contract of indemnity.

Registration would of itself work out a parliamentary title by degrees, and any attempt to expedite the process must be beset with difficulties. For let it be again supposed that the title submitted to Government examination is not absolutely perfect. Though good enough, perhaps, for all purposes of security, it suggests many doubts and questions to the practised acuteness of the conveyancing counsel by whom it is investigated. What then? Are these to be paraded on the face of a certificate of qualified approval? Or is the Registrar to declare, by virtue of his new parliamentary authority, that the defects which have been pointed out to him by his counsel shall cease to exist; charging a premium for this work of destruction, as for an extra service? Or is a safe holding title to be condemned as bad, because not theoretically faultless?

The successful example of the Incumbered Estates Court in Ireland may be referred to as a practical refutation of the foregoing observations; and I am aware that the eminent members of the Incumbered Estates Court Commission have recommended, unanimously, the permanent admission of the principle of parliamentary title into the ordinary administration of the law. I am willing to admit, moreover, that an English "Land Tribunal," if once established and worked with tact and daring by men as able as the Commissioners of the Court in Ireland, might on the whole give public satisfaction. The subject before this Commission, however, is not a Land Tribunal but a Register; and the purport of my argument is not that parliamentary title is an evil, but that the benefits of it ought to be administered continuously by Registration, and not intermittingly by a kind of periodical outlawry.

Investigation of title, as now conducted, is directed not only to the present security but also to the future exhibition of title. It is a process for the perpetuation of evidence, not less than for the detection of latent defects.

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Now this evidential character of the practice of conveyancing—a chief cause of its expensiveness—would be confirmed and aggravated by a law giving to the conveyancer's opinion the force of an Act of Parliament. An Insurance Office would only need to concern itself about the sufficiency of an average premium to cover with a fair profit the real average of risk: a counsel dispensing parliamentary title would not be dealing with any question of chances and averages; he could not use for his guidance that intuitive perception of men and things by which half the business of life is conducted; he would not be acting on his own judgment of the prudence of a trading operation; but must prepare himself to bring forward a body of formal evidence, sanctioned by acknowledged rules of practice, and producible in Parliament by some future Minister of Justice as the sufficient ground for the exercise of a judicial, nay a legislative, authority.

For the reasons above explained, I think that Insurance of Title might be better and more economically effected by private enterprise than by any system of Government guarantee. I think also that a free competition of interest and intelligence would be our best guide to the discovery of the proper scale of premiums and the most convenient course of practice.

More particular explanation of the manner of registering the Freehold.

Returning from a long, but not unnecessary, digression on Insurance of Title, I proceed to explain more particularly the manner in which the first registration of the Freehold would be effected. The Assistant Registrar would have brought down with him from the London Office a copy of the "Book of Reference"; a document embracing the whole area of the parish, lotted out into divisions, determined and limited by the physical boundaries actually existing on the land, and distinguished from each other by a series of consecutive numbers referring to a corresponding series of numbers on the Parish Map. It would be the duty of the Assistant Registrar to convert this copy of the Book of Reference into the commencing register of the Freehold Title; by inserting, in columns provided for the purpose, opposite to the numbers and particulars of the respective lands, the names, addresses, and descriptions of the respective persons admitted as freeholders, with the dates at which their respective titles were allowed. These dates would be recorded for the purpose of fixing the beginning (and consequently the end) of the period of transition allowed for the registration of qualifications of the freehold; and during which, therefore, every transferee of the freehold would become such with the knowledge that the legal proprietorship thus acquired by him might afterwards appear to be subject to rights not yet disclosed by the register. The commencing Register of the Freehold Title might be to the following effect:—

GRAVENEY, KENT.

Survey of 1858.

LIST OF REGISTERED FREEHOLDERS.

No. on Map.	Description.	Contents. A.	R.	P.	Date of Registration.	Name of Freeholder.	Address of Freeholder.	Description of Freeholder.
1	Field	64	0	2	1 May 1858	John Jones	Graveney	Farmer
2	Ditto	23	2	22	"	"	"	"
3	Ditto	20	1	39	"	"	"	"
4	Ditto	9	3	16	"	"	"	"
5	Ditto	5	0	36	"	"	"	"
6	Ditto	14	0	8	"	William Wilkinson	Maidstone	Tanner
7	Ditto	14	3	19	"	"	"	"
8	Ditto	14	3	36	8 June 1858	"	"	"
9	Ditto	14	1	25	1 May 1858	John Jones	Graveney	Farmer
10	Ditto	11	2	11	"	"	"	"
11	Ditto	18	1	38	"	"	"	"
12	Ditto	18	0	15	"	"	"	"
13	Ditto	14	3	32	"	"	"	"
14	Ditto	27	0	21	"	"	"	"
15	Ditto	0	1	19	"	"	"	"
16	Ditto	23	2	8	9 June 1858	"	"	"
17	Ditto	13	3	26	1 May 1858	"	"	"
18	Ditto	20	0	39	"	"	"	"
19	Cottage and Yard	0	0	27	"	"	"	"
20	Garden	0	1	36	"	"	"	"
21	Field	7	3	1	"	"	"	"
22	Ditto	2	3	1	"	"	"	"
23	Ditto	5	0	27	"	"	"	"
24	Ditto	6	3	14	"	"	"	"
		And so on.						

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Certification of Title.

The registered Freehold Title would be embodied in an Official Certificate, issued from the London Office on the basis of the return of the Assistant Registrar. The freeholder might take out a separate Certificate for each registered unit of land, or he might have all his lands put into one Certificate, or might adopt any intermediate arrangement; and he might at pleasure alter the arrangement of his titles by surrendering the current Certificates and taking out others, or one other, in their stead. The Freeholder having before the close of the local proceedings intimated to the Assistant Registrar the arrangement most agreeable to him, his Certificates would be made out in London accordingly; and they would be forwarded by post or kept till called for, according to instructions which would have been taken by the Assistant Registrar on this point also. A book would be lying on the table during the local proceedings, arranged in convenient columns with printed headings, for recording the freeholder's instructions in his own writing or under his signature.

The Certificate of Title would be only a symbol of the effect of the Entry of Title in the Register. It would not give any right beyond that given by the original entry of which it would be a copy. Any objection, therefore, which may have been made to the Certificate of Title is in fact an objection to the entry or registration of title. That the Government should take upon itself to tell an intending purchaser, as a simple ascertained fact, that the seller is entitled to sell—this may or may not be expedient, opinion is divided on the subject—but it cannot possibly be desirable that the purchaser should be brought up to London to receive the information, if it is to be given to him at all. Registration in London would be a kind of metropolitan feudalism, unless the registered title could derive from a movable symbol a ubiquitous transferability.

Description of the Certificate of Title.

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The form of Certificate which I propose to adopt will be found at the end of this paper. The specimen given is supposed to relate to a title comprising several registered units of land all contained in the same Parish. I beg here to make a single reference, in passing, to a form printed in the Appendix* to the Report of the Registration and Conveyancing Commission, containing variations adapted to the case of a title comprising lands in several Parishes: the principle of which variations might evidently be extended without difficulty to the further case of a title comprising lands in several Counties.

The appended form of Freehold Certificate, like most of my other forms, is printed partly in black and partly in red ink. It will be understood that the black ink always represents a printed form, and the red ink manuscript insertions in it.

It will be observed that the Freehold Certificate contains a copy from the Register of the particulars of the lands comprised in the title; with three forms indorsed; the first applicable to the case of a transfer, the second to the case of a charge, and the third to the case of a surrender. The second and third pages of the Certificate are occupied by tables, suitably arranged for announcing the existence, and referring to the particulars, of all charges and notices standing registered against the freehold title at the date of the issue of the Freehold Certificate. I may just mention, in passing, that previously to any dealing with his land the freeholder would clear his title from any incumbrances which, although disclosed by the third and fourth pages of his Certificate as having been in force at the date of that Certificate, had in fact been subsequently got rid of. This clearing process would be effected by returning the current Freehold Certificate into the Register Office, and taking out a new one in its stead; which new Certificate would disclose on its second and third pages only such charges and notices as still remained in the registered title, and not any former charges or notices of which the entries had been cancelled.

Method of transferring the Freehold by indorsement on the Certificate of Title.

The method of transferring the freehold would be to fill up and sign the indorsed form of transfer; which would be subject to the *ad valorem* conveyance duty, and must therefore mention any pecuniary consideration. Adhesive stamps would be provided, which would be affixed to the form of transfer, and would be cancelled by the Registrar when the transfer came in for registration.

The Certificate of Title indispensable, and why so.

The method of transfer by indorsement upon a description of the land copied by authority from the Register is in my opinion indispensable to the working of a Register of Title. Every transfer must adhere exactly to the registered description of the land, without either omitting or adding a single word; for a ministerial officer, acting *ex parte* and *in rem*, cannot be permitted to guess at

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the effect of variations of language. Now it would obviously lead to endless confusion to insist on a literal adherence to one authentic description kept in a Government Office in London, unless that description were actually copied out for the persons who had to use it, upon the very paper which they had to sign; for nothing short of this would ensure correctness.

Important effect of the Certificate of Title as a safeguard against forgery.

The Certificate of title would be highly valuable as a safeguard against forgery. It must be remembered that to register a transfer is not merely to give notice of the existence of an instrument of transfer, genuine or spurious; but to act upon the registered instrument as if genuine, by taking the registered title out of the name of the transferor and putting it into the name of the transferee. Now if such a change in the registered title were effected on the faith of a forged transfer, and the registered transferee should afterwards sell and transfer the land to a *bonâ fide* purchaser, this purchaser could not indeed be allowed to keep the land but he must not lose his purchase money. He must have a right of action for damages against the Registrar; in other words against the Government. The actual money cost of such a liability might not in the event be great; but the anticipation of an unknown evil may be exaggerated, and it is important that the cause of Registration should he relieved from this incubus.

We may adopt from the machinery of the public funds a simple and effective method of accomplishing this object.

A person desirous of forging a transfer of funded property cannot do so unless he has discovered the exact amount of stock standing in the name of the proprietor whom he intends to personate. The No. which will be observed at the top of the proposed Certificate would protect in a similar manner the registered title to land. In order to make this clear I must describe another part of the official machinery; the "Journal" for the Parish of Graveney.

It is well known that the easiest way of keeping an account is first to write down day by day consecutively, in a Journal, the elements of the account in the order of their occurrence; and then to classify these entries under appropriate heads in a Ledger.

The "Journal."

On this principle, all new matter admitted into the Register for the Parish of Graveney would be entered at first into a "Journal" kept for the parish. The form of the Journal might be as follows:—

JOURNAL ENTRY No. 1.

To_____Ledger No._____

_____Ledger No._____

GRAVENEY, KENT.

SURVEY OF 1858.

Lands numbered_____

_____

_____

Charge No._____

Freehold Notice No. _____

held by_____

of _____

From No._____

To No._____

Certificate filed No._____

Entered_____1858.

JOURNAL ENTRY No. 2. *Mr. Wilson.*

To _____ Ledger No. _____

_____ Ledger No. _____

GRAVENEY, KENT.

SURVEY OF 1858.

Lands numbered _____

_____

_____

Charge No. _____

Freehold Notice No. _____

held by _____

of _____

From No. _____

To No. _____

Certificate filed No. _____

Entered _____ 1858.

It will be observed that the above form is a mere skeleton available for insertion of the name of the person holding, at a given date, the freehold, or a given charge or notice, of or affecting any given lands within the parish. In order to illustrate its working, I subjoin the filled up Journal entry of the title of Mr. Jones, the first registered freeholder of the lands mentioned in the Freehold Certificate already referred to.

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JOURNAL ENTRY No. 40.

To Freehold Ledger No. 10.

_____ Ledger No. _____

GRAVENEY, KENT.

SURVEY OF 1858.

Lands numbered 1, 2, 3, 4, 5, 9, 10, 15, 16, 19, 20, 21, 24.

Charge No. _____

Freehold Notice No. _____

held by John Jones,

of Graveney, Farmer.

From ~~No.~~ commencing register.

To No. _____

Certificate filed No. _____

Entered 1st July, 1858.

It will be observed that the blank Journal entries are numbered consecutively. The method of entering any act of registration relating to any lands comprised in the Parish Register would be to fill up the first vacant form in the Parish Journal; and thence to post the substance of the Journal entry to the "Freehold Ledger," or the "Charge Ledger," or the "Notice Ledger," as the case might require. But my present concern is only with the No. of the Journal entry. The officer has been entering other titles before coming to Mr. Jones'. These other titles have occupied the first 39 forms of the Journal. Mr. Jones thus obtains by accident No. 40, which No. is copied from the Journal entry into his Certificate.

As the Books open to the public at the Register Office would not give any clue either to the No. of the Journal entry or to the corresponding No. of the Certificate, it would evidently be impracticable, without special means of information, to forge the Certificate. Nor would it be a safe thing to attempt to do so. For even supposing a collusive or accidental discovery of the No. given to Mr. Jones on the 1st July 1858, it might have happened that before a transfer of a forged Certificate based on this discovery came in for registration the genuine Certificate of Mr. Jones' title had been privately returned into the office for the purpose of giving effect to a charge or in order to clear the title. The effect of this intermediate cancellation of the genuine Certificate would have been to change the number of Mr. Jones' title from No. 40 to some other No., fixed accidentally by the state of the Journal at the date of the registration of the return into the office of the Certificate No. 40. Consequently the spurious No. 40 when brought in for registration would clearly appear to be a forgery, because the real No. 40 would have been already cancelled and filed and replaced by another No. The bearer of the forged Certificate would therefore be taken into custody; or at any rate would have to give a satisfactory account of himself and of the circumstances under which he had become implicated in the forgery.

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Summary of the effect of the Certificate of Title.

To sum up in a few words the effect of the Certificate of Title. It would ascertain the thing appropriated. It would ascertain the actual condition of the title, as an ownership absolute or qualified by ascertained incumbrances. It would name the present proprietor; and possession of it would identify him It would provide him with a deed of conveyance ready for immediate signature, anywhere, on insertion of the name of the intended transferee. In a word, it would contain a portable title, accurately defined, incapable of forgery, and transferable with as much facility as a bill of exchange.

Principle of "reputed ownership" applied.

It has been already intimated that a forged transfer would not pass the property. In strict principle, it ought to be made a question for a jury whether the forgery were occasioned by the gross negligence of the registered proprietor, in not taking proper care of his Certificate; and if gross negligence were proved the proprietor ought to lose his land without any right of recovering compensation from Government for a loss caused by himself. But to introduce the element of negligence would, I think, be a needless refinement. As the difficulty of forgery would be such as to render its occurrence extremely rare, I should think it better to provide generally that in every case of forgery the proprietor should receive back his land and the purchaser his money; even if this rule should necessitate the formation of an Insurance fund by a trifling general tax on transfers—perhaps an adhesive penny stamp. But, short of forgery, the Certificate must verify the transfer, on the principle of "reputed ownership." If land were registered in the name of an infant or a married woman or a lunatic, it would be competent to any person, justified by interest or otherwise in guarding the title against such an action of the machinery of registration as would counteract the effect of this personal disability of the registered proprietor, to introduce the element of disability into the registered title by means of a registered notice. But, if notice of the disability were not registered, the Register must give validity to a title acquired in ignorance of the fact by a *bonâ fide* purchaser for valuable consideration.

The Register would confer upon a *bonâ fide* purchaser for valuable consideration a title paramount to unregistered rights.

The Register must, in short, confer upon a transferee, becoming such after the lapse of the prescribed period of transition, *bonâ fide* and for valuable consideration, a title paramount to all unregistered rights. A volunteer, or a purchaser for valuable consideration but with notice, might convey a good title to a purchaser for valuable consideration without notice. Conversely, title once acquired by a purchaser for valuable consideration without notice would retain its validity in the event of its subsequent transmission to a volunteer or to a purchaser for valuable consideration with notice. But a person accepting a transfer with knowledge that it ought not to be made to him could not, as it seems to me, be allowed to profit by his own wrong, whether his knowledge were derived from the register or from some other source of information. Registration ought not, in my opinion, to set aside the doctrine of Equity respecting Notice. I cannot view that doctrine otherwise than as an application to the subject of Title of the principles of natural justice; but I hope to prove that any practical inconvenience which has hitherto arisen from it would be obviated by the new condition of Title which Registration of Title would introduce. I must first however describe the remaining parts of the system of book-keeping, which has produced, as its ultimate result, the Certificate of Title.

The "Freehold Ledger."

The account from which the Certificate of Title was immediately copied is contained in a book called "The Freehold Ledger." This consists of a number of printed forms bound up together. Each of these forms contains three distinct tables, the first applicable to the substantive registration of the title to the freehold itself; the second applicable to the disclosure of charges affecting the freehold; and the third applicable to the disclosure of notices affecting the freehold. The Ledger account of Mr Jones' title is as follows:—

GRAVENEY, KENT.

FREEHOLD TITLE, No. 10.

SURVEY OF 1858.

Lands numbered 1, 2, 3, 4, 5, 9, 10, 15, 16, 19, 20, 21, 24.

No. of Journal Entry.	Date of Entry.	Name of Freeholder.	Address.	Description.	Date of Cancellation of Entry.	Reference to cancelled Certificate in Certificate Book.	Date of Judicial Order, if any.	Reference to Order Book.
40	1 July 1858	John Jones	Graveney	Farmer.				

REGISTERED CHARGES.

No. of Journal Entry.	Date of Entry.	Reference to Charge Ledger.	No. of Charge in Certificate Book.	Nature of Document referred to by the Charge.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of Freehold Title.	Date of Cancellation of Entry.	Reference to cancelled Certificate in Certificate Book.	Date of Judicial Order, if any.	Reference to Order Book.

REGISTERED NOTICES.

No. of Journal Entry.	Date of Entry.	Reference to Notice Ledger.	Purport of Notice.	No. of Notice in Notice Book.	Nature of Document, if any, referred to.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of Freehold Title.	Date of Cancellation of Entry.	Reference to cancelled Certificate in Certificate Book.	Date of Judicial Order, if any.	Reference to Order Book.

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It will be observed that Mr. Jones' title is numbered 10. The forms contained in the Freehold Ledger having been numbered consecutively throughout the volume, Mr. Jones' title was entered in the first of these forms which happened to be vacant at the time when his title was registered. Only nine freehold titles had preceded it, although its Journal Entry was numbered 40; some perhaps of the Journal forms having been occupied by entries registering transfers of freeholds, and a good many of them having been occupied by entries registering "Charges" and "Notices."

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At the top of the blank form of Journal entry given in a former page* provision is made for reference to the Ledgers; and the filled-up Journal entry

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of Mr. Jones' title† refers to No. 10 in the Freehold Ledger; which is the account just set out.

A Transfer and consequent entries.

Let it now be supposed that Mr. Jones transfers the freehold to Mr. Thompson, by means of the form of transfer indorsed on the Certificate of Title. The transferred Certificate is sent in to the office in order that the transfer may be registered. There is a file on which returned Certificates are placed as they come in, just as paid cheques are filed at a Bank. Before filing a Certificate, the officer writes in bold figures, at the upper right-hand corner of its first page, the number immediately following that similarly written upon the Certificate last filed. As soon as 250 Certificates have been filed they are taken off the file and bound into a volume, which the numbering of the Certificates has already paged and which is endorsed thus,

Graveney
Certificates
1 to 250.

Concurrently with the numbering and filing of the returned Certificate the officer makes certain entries.

First, there is the entry of Mr. Thompson's title upon the first form of the Journal which happens to be vacant, and which we may suppose to be No. 360. The Journal entry now made of Mr. Thompson's title is exactly similar to that formerly made of Mr. Jones' title, except that the later entry instead of referring back to the commencing register refers to the preceding Journal entry No. 40; thus

From No. 40 .

The return into the office of Mr. Jones' Certificate enables the officer to complete the references at the foot of the Journal Entry No. 40. He inserts in the 2nd line of reference the No. 360 as that of the next succeeding step in the title; thus,

To No. 360 .

He then turns to the No. just given to the filed Certificate, which happens to be 182, and inserts it in the third line of reference thus,

Certificate filed No. 182 .

Having completed the Journal Entries the officer turns to the account of the title in the Freehold Ledger, copied above.

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He there inserts the particulars of the cancellation of Mr Jones' title, and the particulars of the title acquired by Mr. Thompson. Then he draws a line through the Ledger Entry of Mr. Jones' title, leaving however its origin and its end uncancelled for facility of reference. The account in the Freehold Ledger then presents the following appearance :—

No. of Journal Entry.	Date of Entry.	Name of Freeholder.	Address.	Description.	Date of Cancellation of Entry.	Reference to cancelled Certificate in Certificate Book.
40	~~1 July 1858~~	~~John Jones~~	~~Graveney~~	~~Farmer~~	24 Dec. 1856	182
360	24 Oct. 1856	David Thompson	10, High Street, Canterbury.	Chemist.		

A new Certificate, No. 360, is issued in favour of Mr. Thompson; and Mr. Jones is now entirely out of the title, just as if the freehold had never belonged to him. Such is the public result of the entries; but in case of any suspicion of irregularity the Registrar can trace the title backwards with great facility. The cancelled entry of Mr. Jones title in the Freehold Ledger refers at the end of the line to the cause of the extinction of that title, to be found at page 182 in the volume of returned and bound-up Certificates, called the "Certificate Book"; where the Certificate formerly held by Mr. Jones, and also the authority given by Mr. Jones, on the indorsed form of transfer, for the substitution of Mr. Thompson in his place, can be inspected as vouchers; and at the beginning of the line there is an uncancelled reference to Journal Entry No. 40 as the original ground for the now cancelled entry. And the backward reference which is seen on inspecting Journal Entry No. 40 shows that this entry was based immediately on the commencing register made up from the return of the Assistant Registrar.

The case of a simple transfer may suffice for the present to illustrate the working of the first of the three tables contained in the Freehold Ledger. I will endeavour to give a general idea of the effect of the other two tables, although in doing so I must to some extent anticipate the description of a distinct part of my proposed machinery.

Tables of Charges and Notices.

Registration of a "Charge" would exert a double action on the title: it would subject the freehold to an incumbrance, and would originate a subordinate title registered similarly to the freehold and represented by its own independent Certificate. With the substantive operations of the "Charge Ledger" I am not at present concerned. But while opening a distinct account for the derivative title, the Registrar would also enter in the account of the freehold title all the particulars of the incumbrance to which the Freehold had become subject. The difference between the substantive entry and the relative entry would be, that the substantive entry would be made for the express purpose of facilitating a future devolution of the derivative title, all the steps of which devolution would be successively registered; while the relative entry would register the charge once for all, as an unchanging burden on the freehold, to continue in the hands of an unknown or unobserved person or succession of persons until finally removed: no place being provided in the second of the three tables contained in the Freehold Ledger for the insertion of the name even of the first holder of the charge.

In the Journal entry of the first registration of a charge both the references at the top of the Journal form would be filled up; the one with a No. or page in the Charge Ledger, the other with a No. or page in the Freehold Ledger: but on the occasion of a transfer of the charge reference would be made, from the Journal entry of the transferee's title, to the Charge Ledger alone, because it would not matter to the freehold title whether the charge were held by A or by B. If, again, a sub-charge were derived out of the original charge, a double reference would be made to the Charge Ledger from the Journal Entry of the title created by the sub-charge; namely, first a reference to a Ledger account then newly opened in the Charge Ledger for registering the creation, devolution, and eventual extinction of the subderivative title

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created by the subcharge; and secondly a reference to the Ledger account already opened in the same Charge Ledger for similarly registering the title to the original charge. But as the weight resting upon the freehold would neither be increased nor diminished by the derivation of a subderivative title out of that portion of ownership which had been derived by the original charge out of the freehold, the Ledger account of the freehold title would not mention a transaction in which the freehold title had no concern.

In like manner the title to a notice would be entered substantively in the Notice Ledger; and also relatively and unchangingly in the third table of the Freehold Ledger Account.

It will be evident on inspection of the second and third tables that the fullest particulars of charges and notices would be appended to the Freehold Title. *As to Charges:* the date of the first registration of the charge; the page of its ledger account; the No. or page of the charge itself in the certificate book; the nature and date of the document referred to by the charge; the page of the book at which that document itself might be found bound up with other documents; its relation, whether total or partial, to the lands comprised in the freehold title. *As to Notices:* the date of the first registration of the notice; the page of its ledger account; the purport of the notice; the page of the notice book at which the notice itself had been bound up; the nature of any document referred to by the notice; the date of such document, and the page of the document book at which it might be inspected; and lastly, the total or partial relation of the notice to the lands comprised in the freehold title. The account of the freehold title would thus contain all the particulars of every part of the title except the names of the successive holders of charges and notices.

The "Index."

Such being the contents of the Freehold Ledger, it remains to be explained how the accounts contained in that book are indexed.

It will be remembered that the basis of the Register is the Parish Map; which has been lithographed and published, and is accessible for reference, not only at the Register Office but also in libraries and public establishments. Sections of the Map can be purchased at a cheap rate, and therefore are or ought to be in the hands of every proprietor.

The Freehold Ledger is indexed by reference to a consecutive list of numbers corresponding with the numbers upon the Map.

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The subjoined form (in black ink) contains (in red ink) the insertion requisite for indexing the title held successively by Mr. Jones and Mr. Thompson, as above explained :—

GRAVENEY, KENT.

SURVEY OF 1858.

INDEX TO FREEHOLD LEDGER.

No. of Map.	
1	10
2	,,
3	,,
4	,,
5	,,
6	
7	
8	
9	10
10	,,
11	
12	
13	
14	
15	10
16	,,
17	
18	
19	10
20	,,
21	,,
22	
23	
24	10

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Manner of searching the Register.

Let it now be supposed that a person wishes to investigate the title to the field No. 3 on the public map of the Parish of Graveney. He calls at the Register Office and opens a duplicate of the above-mentioned Index, which lies on the table for gratuitous inspection. Being referred by this Index to No. 10 as the No. of the Ledger Account for the title in which the registered unit of land No. 3 is comprised, he at once accomplishes the object of his search by inquiring into the state of the title No. 10.

Mr. Thompson's title is a very simple one, but there would literally be no search at all even in the case of an investigation of the most complicated title. There would in every possible case be an instant reference to the exact pages of books at which every part of the registered title might be inspected.

In order to facilitate searches, one of the lithographed copies of the map might be divided into titles by red ink boundaries, and the names of the freeholders might be written in. A "title map" of this kind would answer the purpose of assisting the inexperienced searcher even if not kept quite up to the day; for a person acquainted with the locality would be as effectually guided by the titles of a week or two back as by those actually existing. As the Ledger numbers of the titles would not appear on the "title map," but only the numbers of the lands, the boundaries of the titles, and the names of the freeholders, there could not be any confusion of numbers to cause mistakes. The searcher could not help giving his instructions to the officer either by reference to the registered No. of the land, which could not have undergone any change, or by reference to the name of the freeholder. This, if the map were at all in arrear, might have changed; but the change, though it might elicit a further explanation, could scarcely be a cause of error. The searcher might say to the officer, "I wish to see Mr. Thompson's title;" and the answer might be, "Which part of it? there has been a division of it since that map was made up." But I do not see why the map should not be kept close up to the day or very nearly so. If any part of it were soon spoilt by repeated alterations, it would be easy to paste another lithograph over the altered part so as to avoid the trouble of recolouring and relettering the whole map.

The Parish Index would refer to the County Index for the title to any land which, being held along with lands in some other Parish or Parishes, would be comprised in a "County Certificate." The reference of the Parish Index to the County Register might be thus expressed:—

No. on Map.	
25	See County Register.
26	" "
27	" "
28	" "

In the "Compartment for the County" would be kept a duplicate of the Index for each Parish in the County; in which however only those lands would be indexed which belonged to the County Register. On going to the County department our searcher would turn to the County Index for the Parish of Graveney; which would refer him to the No. of the Ledger Account in the "Kent Freehold Ledger" comprising the Graveney Land to which his investigation had reference; unless, indeed, this title, extending into several Counties, belonged to a still higher department, called the "National Register"; which would be referred to from the County Register upon a principle similar to that above explained; and which would be provided with triplicate copies of all the Parish Indexes, as the basis of a National Index to those lands which belonged to the highest or National department.

The Parish Indexes kept in the County Register and in the National Register would be arranged alphabetically, and bound up together in large books (several for each County) paged throughout; and indexed at the beginning by a list of

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the Parishes, arranged alphabetically, and referring to the pages of the bound book at which the respective Parishes might be found. Thus the searcher, being referred by the Parish Index to the County Register, would take down the Volume of Indexes (A to G) at the County Compartment. The list of Parishes at the beginning of the Volume would direct him instantly to the first page of the parish of Graveney. The Graveney Index thus found would tell him at once the number of the title in the Kent Freehold Ledger, or else send him higher up to the National Register; where he would take down the "Kent Index" (A to G) and turn, with like facility, to the account for the title in the "National Freehold Ledger." I may here observe that all the Indexes, Parish, County and National, would be similar in form, and might be supplied by contract at so much a thousand, leaving the name of the Parish to be inserted by hand or by a stamp.

Probably the business of registration would fall naturally into the hands of Solicitors and other responsible agents; and this would afford a great practical security against frauds and irregularities of all kinds: but personal attendance might nevertheless be dispensed with in every ordinary part of the business of registration. The fee for a copy of a freehold title might be paid by affixing an adhesive stamp to the inside of an application by post. There might be a moderate and uniform charge (perhaps half-a-crown) for a copy, because the registered title would seldom if ever contain a long list of registered lands. The proprietor of a large estate would find it convenient to hold a separate Certificate for each farm. The charge for a Certificate would be so arranged as not to hold out an economical inducement to an inconvenient aggregation of lands in one title: it might, for example, be so much per registered unit of land

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The Registrar's answer to an application by post for a copy of the freehold title account would be written upon a printed form to the following effect:—

GRAVENEY, KENT.

SURVEY OF 1858.

Official Extract of Freehold Title No. _____

Comprising Lands _____

Freeholder _____

CHARGES.

Date of Entry.	Reference to Charge Ledger.	No. of Charge in Certificate Book.	Nature of Document referred to by the Charge.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

NOTICES.

Date of Entry.	Reference to Notice Ledger.	Purport of Notice.	No. of Notice in Notice Book.	Document, if any, referred to.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

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If a search were made personally, the searcher might only wish to ask a question, for instance—"Who is the freeholder of Field No. 3?" He might go on to ask "Are there any charges and notices?" The officer would answer these questions immediately; and the searcher might take a note of the answers, and might then himself open the Certificate Book, Notice Book, and Document Book at the pages referred to, and read the bound-up charges, notices, and documents affecting the title. A personal investigation of this kind might be covered by a charge of one shilling for the entire search; but it would probably become customary, except on the occasion of some pressing emergency, not to rely on verbal answers to verbal questions, but to take out an official extract of the title; such as that which would be forwarded, as above shown, in answer to an application by post. There would be convenient little printed "instruction papers" hanging up in the Register Office by a string through one corner, to be filled up and handed in with an adhesive half-crown stamp affixed, which the officer would cancel with a suitable instrument; and there would be some handy place in the office where a stamp might be purchased. It would be compulsory on the officer to deliver out the official extract, or if desired to forward it by post, within a prescribed number of hours. For an official extract of any subordinate title the fee should be less than half a crown, say a shilling. There should be a low rate of charge for a search accompanied by the certificates of title. The parties to a sale might call with a considerable number of certificates of title belonging to the same estate; and the fee for the officer's comparison of these with the books, and for his addition of later entries or certificate of their non-existence, ought to be very moderate. The searcher would in all cases have a right of action against the Registrar for any damages occasioned to him by incorrectness in the official extract.

It will have been inferred from the foregoing description that the searcher would not be allowed to see the ledgers, though he might take down and read the Certificate Book, the Notice Book, and the Document Book. The Ledgers must be kept private; both with a view to the protection of the Title by concealment of the No. of the current Certificate of title, as explained above*; and also with a view to the protection of the searcher by concealment of the contents of cancelled entries. The Register must communicate the present state of the title, without giving notice of anything else.

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This latter consideration leads me to conclude the subject of the "Registration of the Freehold" with a few remarks on the Doctrine of Notice.

Remarks on the Doctrine of Notice.

If a person acquires a legal title with knowledge or means of knowledge of the existence of an equitable right binding on his predecessor in title, he is treated by the Court of Chancery as a trustee for the person of whose right he has had notice: an obligation evidently just in principle, though bearing hardly on the purchaser who finds himself unexpectedly called upon to give effect to some right of which he had no personal knowledge when he paid his purchase money, but which his legal advisers might with extra diligence have found out. Having however had some means of protecting himself, while the equitable proprietor had none, the claim of the latter is preferred; and justly so.

Let it now be supposed that a Register has been established, not providing for the registration of those equitable rights which constitute the true title, but setting up in superiority to the true title a parliamentary or legal title, always inflexible and often fictitious: is a transfer of this registered legal title to convey to a purchaser for valuable consideration a title paramount to the unregistered equities? This ought not to be so, if the purchaser has acquired his legal title with knowledge or means of knowledge of the existence of those equities. A purchase with knowledge is a fraud; a purchase with unemployed means of knowledge, an act of negligence. Now to destroy another man's right by negligence is a species of misconduct differing from fraud in degree rather than in kind: a species of misconduct, therefore, which cannot consistently be allowed by the civil courts, if fraud be forbidden by them. There seems to be no stopping point anywhere within the extreme limit of the doctrine of constructive notice; unless the high principle of conscientious duty is to give place, in the administration of civil justice, to such rules of right and wrong as might be acted on concurrently in the Central Criminal Court.

The Plan of Registration which I am desirous of submitting to the attention of the Commission need not call in the aid of an Act of Parliament to legalize misconduct. For it offers to the equitable proprietor an infallible method of

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communicating to the intending purchaser express notice of the equitable right. Does he omit to give this notice? Then the positions of the parties are reversed. It is the negligence of the equitable proprietor which misleads the legal purchaser. In a clear case the Court of Chancery might protect the equitable title, although not registered; but in a case of doubt it would leave the equitable proprietor to bear the consequences of his wilful omission.

But perhaps the omission has not been wilful. The equitable proprietor may have been precluded by contract, as of course he might be, from registering a notice of his title. Such a voluntary surrender, then, of the right of registration must necessarily be construed as implying a grant to the legal proprietor of an *agency* for the unregistered beneficiary, similar to that allowed by law to a managing partner. Doubtless such agency would not authorise fraud; but it would entitle a purchaser, even with knowledge of the existence of an unregistered beneficiary, to assume without inquiry his assent to any apparently honest dealing with the land.

The legal title, being subjected by the Register to an easy method of perfect regulation, would not any longer be pushed out of the way by the Court of Chancery as an obstructive remnant of feudalism, but would deserve and obtain the favor of all the Courts alike, as a modern instrument of disposition, existing for the common benefit of all persons interested in landed property, and to be kept by the Courts in efficient working order, even in a case where the beneficiaries should have elected to place it for their common interest under a representative management.

The transferee of a registered title would have acquired something accessible and intelligible to himself, transferred as soon as offered for sale, free from retrospective and collateral investigations, and presumptively perfect. He would be entitled to take his stand upon that presumption of right conduct, which is allowed by law to every man who has not been affirmatively convicted of a deviation from rectitude. Any person imputing to him notice of a concealed right would have to prove the notice and to account for the concealment. And we might safely leave the Courts of law and equity to apply, as they doubtless would do, to any question of this kind, those established principles of decision which regulate, in a perfectly satisfactory manner, the transfer of negotiable securities.

The next division of the subject will be:—

Registration of Charges and Notices.

Method of subjecting the freehold to a charge.

The second of the three forms indorsed upon the Certificate of the freehold title is as follows:—

"Charged in favour of _____

of _____

with a _____

dated _____

made between _____

_____

and identified by my signature indorsed upon it."

The freeholder fills up and signs this charging form; which does not bear a stamp; the duty, if any, being payable upon the document introduced by means of the charge into the legal title.

This document is accurately described by the particulars necessarily inserted in the charge, and is further identified by the prescribed indorsement of the freeholder's signature. Some further mode of identification might easily be added if found in practice to be needed.

"The Charge Ledger."

An Account of the title to the charge is contained, as already mentioned, in "The Charge Ledger." This account does not differ in principle from the account of the freehold title in the Freehold Ledger; but, with a view to the accurate definition of the derivative interest created by the charge, the Charge Ledger Account contains tables for the particulars of preregistered charges and

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notices, as well as tables for the particulars of postregistered charges and notices; so as to disclose any prior incumbrances on the freehold, as well as any subsequent incumbrances on the charge itself.

The "Charge-Certificate."

This variation will be understood on inspection of the "Charge-Certificate" appended to this paper.

How the document introduced by the charge into the title gets into the Document Book.

As the arrangements leading up to the "Charge Certificate" would closely resemble those already described in relation to the freehold, I will not tax the patience of the Commissioners with a second description; but it is necessary to explain how the document referred to in the charge finds its way into the Document Book.

When the Freehold Certificate comes back into the office with the charge indorsed upon it, the Registrar numbers it, and puts it upon the file of returned Certificates, as already explained. By thus numbering the filed Certificate on which the charge is indorsed he gives a No. to the charge itself, as will be observed on turning back to the tables given at page 99, where the charge is referred to by its No. in the Certificate Book. The registrar writes, at the same time, in the margin of the indorsed charge, a reference from the charge to a number which he gives to the accompanying document.

Documents as they come in are numbered consecutively in a manner resembling the numbering of the returned certificates. A file would scarcely suit for holding together documents which might be written on parchment; but a string might be continued through each succeeding document by a sharp instrument. Or if this kind of connexion were found to be inconvenient the documents might be kept together by a clasp. Like the returned Certificates, they would have been already arranged and paged when the strung-together or clasped bundle had become thick enough for binding into a volume called "the Document Book" indorsed

Graveney
Documents
1 to 100.

It would be a rule of practice that Documents should be written book-ways with a margin for binding, but an irregularity in this respect must not exclude a Charge from the title. If the original document will not bind a copy must be made book-ways at the expense of the person registering; the original being also lodged in the office: and if the irregularly shaped document were one which had been signed after the promulgation of the rule, a pecuniary penalty must be added to the price of the copy. I think the best kind of penalty would be a stamp duty on the copy equal to that payable on the original, but with a maximum limit of 10*l.*; this duty being paid, in common with all other fees payable at the office, in adhesive stamps, distinguished as "registration stamps" in order that the office might get credit for its profits, yet without being subjected to the inconvenience of receiving money over the counter.

The Register would facilitate loan transactions.

It will be at once perceived that the Register would afford great additional facilities for loan transactions.

A Charge for securing a loan would produce in favor of the lender a certificate of his derivative legal title, transferable or chargeable by an indorsed signature. It would also produce in favor of the borrowing freeholder a certificate of his incumbered freehold title. This in a legal point of view would be just as available for transfer or for subjection to a further charge as the certificate of the unincumbered freehold title originally was. After a second or third or fourth mortgage, the freeholder would still retain an accurately defined symbol of his remaining interest, with an indorsed form suitable for giving effect to a still further incumbrance.

Method of removing a paid mortgage out of the title.

On payment of the mortgage money, the mortgagee would fill up and sign the form of surrender endorsed on his Charge-Certificate. The surrendered Charge-Certificate, when returned into the Register office, would be numbered and filed. The date of surrender, with a reference to the page of the surrendered certificate in the bound Certificate Book, would be inserted in the appropriate columns in the substantive account contained in the Charge Ledger, and also in corresponding columns in the table of charges appended to the account of the freehold title in the Freehold Ledger. The entry of the charge in each of these accounts would be cancelled, and the charge would thus be taken out of the title so completely that no search at the offic could detect its former existence: while the references remaining uncancelled, as already explained, at

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the beginning and at the end of the line containing the cancelled entry of the charge in the Freehold Ledger, as well as the corresponding references remaining uncancelled in the Charge Ledger, would enable the Registrar to turn instantly to his voucher for the cancellation of the entry, as well as to trace the derivative title backwards to its origin.

Form of mortgage to be simplified.

A mortgage deed is at present a rather formidable affair, occupying perhaps several skins of parchment: but "an act to amend the law and practice of mortgages" might reduce the length of the special contract to three or four lines; in fact to a statement of the amount of the loan, the rate of interest, and the periods fixed for payment of principal and interest.

The Register would give a title to a Lessee and facilitate dealings with the lease.

The transaction of granting a lease cannot perhaps be very greatly simplified. The covenants for payment of rent and for quiet enjoyment might, indeed, be superseded by a general enactment; and a "common right" of re-entry on non-payment of rent or on breach of covenant might dispense with the condition and its attendant technicalities. It would not however be by expressing a special contract without special language (a thing evidently impossible though it has been attempted) that a Register of Title would benefit the lessee. It would give him a secure title: he might learn with certainty whether his landlord had power to grant the lease or not. It would give him a title transferable to a purchaser by mere endorsement; and chargeable with a loan in the same manner, with or without an instrument of mortgage; or even by deposit without transfer: a title moreover which might be given up by mere indorsement on the occasion of a new arrangement with the freeholder.

Derivative titles existing at the commencement of the Register might be registered as charges.

The foregoing description, though in terms only applicable to the registration of charges derived out of a registered title, may be extended, by a few additional words of explanation, to the case of a derivative title brought forward before the Assistant Registrar during the introductory local proceedings. Any document creating a single right, such as a money-charge or a lease, would be admitted by the Assistant Registrar as a legal charge and registered accordingly.

In a case of doubt, the Assistant Registrar would determine whether the document brought before him were one which could properly be registered as a document creative of a single derivative title belonging entirely to the applicant; or one which, being operative in favor of several persons having independent rights, could not be treated as belonging separately to any one of those persons, and ought therefore only to be received as the subject matter of notices on the part of such of them as might be desirous of registering their rights. The Assistant Registrar might exercise his judgment freely on this point, as the applicant's title would be perfectly protected by either mode of registration.

Special dispositions relieved from technicalities of form and construction.

* Mr. Joshua Williams' communication.

Mr. Joshua Williams expresses a desire* that the landowner's power of disposition should be relieved by special enactments from various technical rules and forms by which the exercise of it is limited and impeded. The proposed Register would accomplish the same object, without special enactments, by an incidental effect of the charging form. For to charge the freehold with an instrument of disposition would be the only way of producing in the registered legal title a deviation from its normal condition of absolute ownership. And, conversely, any written instrument registered under the charging form would, by virtue of such registration, become a part of the legal title. The charge would unconditionally introduce the instrument into the title: it would "execute" every thing lawful and intelligible contained in the instrument so introduced. Registration would not aid the accomplishment of an unlawful purpose of disposition, for instance the creation of a perpetuity; but it would give to any written expression of intention, capable of operating in equity as an agreement, the effect of a legal conveyance. It would thus relieve the landowner's power of disposition, not from one or two pre-eminent technicalities, but from *all* technicalities of form and construction; and this without special mention of them.

Settlements; how to be made and registered.

* Mr. M. Longfield's communication.

Mr. Mountifort Longfield proposes*, as "a protection amply sufficient against improper alienations," to permit registration of title in the names of several Trustees *without survivorship*, so as to compel survivors to fill up vacancies before transferring the trust estate. Perhaps with such a safeguard, or even without it, there might be landowners who would prefer to withhold and pro-

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hibit registration of their settlements. But the best mode of settlement would be to state the settlor's intentions in the form of Articles, and to register the Articles under the charging form.

Merger would not apply to registered titles. The freehold and the charge might, therefore, both stand in the names of the same trustees; and the derivative legal title vested in the trustees by registration of the Settlement would include any power of sale given to the trustees by the Settlement.

The effect of this arrangement, standing alone, would be that the trustees might, by surrendering their Charge-Certificate, strike the charge out of the title, and constitute themselves simple freeholders.

But any beneficiary might, unless prohibited by the Settlement, register in his own name a notice of the charge, so as to ensure its equitable retention in the title notwithstanding its legal extinction by surrender of the Charge-Certificate.

The form of notice might be extremely simple, for example:—

I, William Jackson,

give notice of Charge No. 76,

affecting lands numbered 1, 4, 5, 9, 15, 16, 19, 24,

in the parish of Graveney in the county of Kent.

Signature, William Jackson,

Address, 7, Rodney Street, Liverpool,

Description, Merchant.

Date, 1 October 1858.

Let it be supposed that a Settlement has been made and registered in the manner above explained. The Trustees are the registered Freeholders. The Settlement has been charged upon the freehold in favor of the same trustees. Concurrently with the registration of the Settlement, a notice of the charge was registered in the name of the Settlor, and another notice of it was registered in the name of his wife. The trustees are about to sell under a power of sale given to them by the Settlement. If the holders of the notices approve of the sale, and have confidence in the trustees, the Certificates of the charge and of the two notices are surrendered, and the trustees sell as simple freeholders. Otherwise, the trustees sell under their power of sale: they transfer the freehold, and surrender the charge; and the purchaser, as transferee of the freehold, writes to the respective holders of the registered notices to request that these, being no longer justified by continuing interests, may be withdrawn from the registered title by surrender of the "Notice-Certificates." In the event of this request not being complied with, the purchaser takes out summonses calling upon the holders of the notices to show cause why the entries of the notices should not be cancelled by judicial orders with costs.

A deed or other instrument of Settlement is only a written expression of a special condition of title, which mere registration cannot simplify. So long as any person entitled by a continuing interest to claim registration of the Settlement declines to consent to its exclusion or removal from the register, it is impossible to register the title truly without disclosing the instrument of Settlement or restating the effect of it. We can but provide means for unregistering the Settlement by consent during the continuance of the interest, or by compulsion on the cessation of the interest. Disclosure of the special matter in favor of the nonconsenting beneficiary is in fact a limitation in favor of the freeholder of the extent of the nonconsenting beneficiary's right of interference with a sale. The personal consent of the consenting beneficiary, dispensing with an examination of his interest, facilitates transfer in the manner contemplated by the system of personal consents proposed by Mr. Ayrton*; while the definition of the interest of the nonconsenting beneficiary maintains unimpaired, though unfacilitated, the transferability without consent of the residue of ownership not belonging to the nonconsenting beneficiary.

* Mr. Ayrton's communication.

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Shares in a railway company are justly called personal property, because the title to them is annexed to the person of an ascertained proprietor. The share register here produces artificially, in the title to an immovable subject, a condition resembling that which arises naturally, in the title to movable chattels, from the material possession of the thing appropriated; namely, the condition of subjection, for purposes of transfer, to a person ascertained by registration in the one case, as by possession in the other. Now the landed property of the present day, though still nominally contrasted to personal property, and deriving from its feudal original a peculiar rule of succession, has assumed, in a gradual process of transformation, the qualities of personal property. It has become completely subject in theory, if not yet altogether so in practical effect, to the proprietor's power of transfer, to his testamentary dispositions, to his debts. Except for its divisibility into partial interests, legal and equitable, the title to land might evidently be registered in the same manner as the title to railway shares. But if the power of transfer in its entirety can be annexed by registration to the person of the shareholder, there seems to be no reason why several fractional powers of transfer should not be annexed by registration to the persons of the holders of the several parts of a divided legal ownership of land; nor why the land-register should not notify, in favor of ascertained persons, the existence of documentary matter bearing upon the legal title, though not registered as a part of it; nor why each fractional legal title, and each right to the retention of documentary matter in the register, should not be embodied in a movable and transferable symbol, following (as a watch or a ring may do) the person of its owner. Title, under every variety, being in fact a personal privilege, cannot be truly exhibited to a purchaser in any other form. For Property consists not, essentially, in the withdrawal of the thing appropriated from the domain of the public, but in the subsistence of a specific relation between the thing appropriated and the person of its proprietor. Now, by ascertaining and registering and certifying this relation, it is possible, without any continuing judicial intervention, to reconcile speciality of title with the maintenance of the transferring power in a state of uniform and unchanging simplicity. For if every possible modification of title is the privilege of a person, registration of title, under every possible condition of its application, might consist in the registration of a person. But this all-pervading personality of registration—the condition, in my opinion, of a ministerial registration of title—would necessitate an extended application of the ancient rule which prohibits an abeyance of the freehold. For the presumptive ownership attributed by the register to the freeholder would be delusive, unless the register could be depended on for the disclosure of all disturbing interests. Everything which could affect a purchaser must be registered: and nothing could be registered otherwise than as the attribute of a person. No part of the registered title could remain in suspension or abeyance, to vest, at a future time, in a person yet unborn. It follows that the interests of unborn children must be represented on the register by living persons; a representation analogous to that proposed by Mr. Ayrton as a part of his plan for simplifying the transfer of settled estates.* To adapt to an altered state of circumstances a rule already in operation might not be thought inadmissible, even if it were necessary in consequence to place the interests of unborn children under the sole custody of private trustees. But such interests might be judicially protected by a very simple process, which I proceed to explain.

* Mr. Ayrton's communication.

The Settlement might be registered under the charging form in favor of the trustees *and the registrar:* the effect of this arrangement being, not that the registrar would act as a trustee, but that he would not allow the trustees to surrender the charge without first obtaining a judicial order authorizing them to do so; an order which they could not obtain without proving, *ex parte* indeed, but to the satisfaction of an experienced referee responsible for the due exercise of his jurisdiction, the legitimacy of the intended surrender. But this judicial control, though affecting a purchaser with notice of the settlement, would not necessarily impede or delay a legitimate sale. For the trustees might, without a judicial order, vest the whole legal estate in the purchaser by transferring to him the freehold and the charge; and if the sale were justified by a power of sale the purchaser would be entitled to an order to remove the settlement from the title.

Neither the legal title of the trustees, nor the judicial control nominally vested in the registrar, would impede the exercise of any power annexed, by special grant or by general enactment, to the ownership of a particular estate. For example, a lease granted under a power of leasing vested in a tenant for

life would be secured as effectually by the "notice" of the lessee as by the "charge" of the legal proprietor.

Theory of the registered notice, and its general applicability.

No system of registration could ensure an invariable coincidence of the registered title with the beneficial ownership. For even if a register could be so constructed as to name a legal proprietor of every beneficial interest appearing upon the register, cases would still occur of interests excluded from the register by nonfulfilment of the conditions, however simple, of registration. Now, any exclusion of a beneficial interest from the register must, to the extent of that exclusion, impart to the registered legal title a power of wrongful disposition; unless the refusal of affirmative recognition be mitigated by a sufficient power of self-protection. A person who from any cause is not named on the register as the proprietor of a right belonging to him, or claimed by him, ought to be provided with an easy method of asserting, on his own responsibility, what the State refuses to assert on his behalf. If the register cannot recognize his title, it ought at least to preserve his claim by appending a notice of it to the registered legal title. Notice to the holder of the legal title is already the proper and ordinary method of protecting an equitable right: the register, by taking charge of the notice on behalf of the public, would only ensure its effectual operation without altering its object or meaning.

Form of the Notice.

A notice, bearing the name and address of some person responsible for it, would be regular, in point of form, if proposing registration of a document, or any part of a document, or any statement of the effect of a document, or any fact, alleged to affect the freehold or some derivative title. A mere general claim to the land would not be received; but the registrar would not inquire into the claimant's interest or into the relevance of the matter stated.

Method of discharging the Notice and annulling the claim by a judicial order.

A copy of the notice would be forwarded by post from the register office to the registered address of the holder of the legal title affected by the notice; who might apply by summons for a judicial order to discharge the registration of the notice; and an order accordingly would take the notice entirely out of the registered title. In case of an appeal from the order, the claim notified would be kept on foot by registration of the pending appeal. An order of discharge, remaining unreversed, would, like the decreet in a declaratory action in Scotland, annul the claim itself.(*a*) I cannot think that a power of registering, *not mere claims, but documents or facts*, under the responsibility of the *summons-test*, and at the peril of costs, would often be abused; and I should deprecate the imposition of an oath or declaration, to perplex the conscience of a claimant desirous of maintaining an honourable though doubtful claim on the faith of the opinions of his legal advisers. The expediency of registering the legal title might be questionable, unless the utmost possible facility were afforded for the registration of counteracting evidence. I would even go the length of allowing registration of a legal proceeding by anticipation, on condition of its subsequent commencement within a limited number of days.

No oath or declaration to be required.

Notice might be registered personally or through an agent or by post.

As the intervention of responsible agents in the business of registration would greatly conduce to the safe and regular working of the register, it might be expedient to provide a convenient *Land-exchange* for the accommodation of an associated and self-governed society of *Land-brokers*. But the conduct of registration business by the persons interested, on their own account, ought not to be discouraged by any needless official impediments. To permit the transmission of notices through the post office would be only a reasonable accommodation to persons resident in the provinces; the office fee being payable by an adhesive "registration stamp." If the stamp on a notice were the same as the stamp on an application for an official extract of a freehold title (say half a crown) this uniform stamp might soon be almost as well understood as the penny postage stamp.

The fee being payable by an adhesive stamp.

Entries consequent on the registration of a notice.

The Notice, whether delivered by hand or sent by post, would be made the subject of a journal entry; which would be posted into the table of notices appended to the freehold or derivative title affected by the notice, and into a substantive account in the "Notice Ledger."

The "Notice-Certificate."

A "Notice-Certificate," in the form appended to this paper, would issue in favor of the person entering the notice; bearing indorsed forms for transfer

(*a*) "It would be necessary to promote as much as possible the diminution of unnecessary litigation, and one mode of preventing this would be to adopt the principle of the declaratory law which prevails in Scotland; the object of which is to obviate prospective suits by calling upon all persons who have any claim to put forward that claim within a certain time."—*Mr. Brougham's Speech on the State and Administration of the Law, 7th February* 1828. *From the "Morning Chronicle."*

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or surrender. By means of the indorsed form of transfer, the title to the notice would be made to follow the title to the interest protected by the notice: and, by means of the indorsed form of surrender, the notice would be taken out of the title when no longer needed.

Effect of the Notice.

A notice would, during its continuance on the register, introduce the matter notified into the title, for all purposes and in favor of all persons: the registered holder of the notice having however a power over the registered matter resembling the power of official protectorship proposed by Mr. Kettle.*

* Mr. Kettle's communication.

Registration of notices might be restricted by contract or condition.

It would not be permitted to limit the effect of the notice to the protection of the interest of the holder of it: for it would be a fraud on the part of a purchaser to disregard any known right whether its existence had been communicated to him by the owner of it or by some one else. But the right to register a notice might be waived by contract or taken away by a condition annexed to a grant. If, then, inconvenience were occasioned in practice by the registration of remote or inconsiderable interests in settled estates, the general power of registration legally incident to every form of proprietorship might be curtailed by an ordinary provision to that effect in settlements and wills. Convenient rules would naturally result from an unfettered experience; and, in time, the practice of conveyancers, sanctioned by some future register act, might obtain the force of law.

Indexing of charges and notices.

The Index to the ledger account of the freehold title would be the only public index to the register. The ledger account of the freehold title would contain references, as already explained, to all charges and notices affecting the freehold title. The ledger account of the title to a charge might refer to other charges and notices affecting the derivative title, but not affecting the freehold; and the ledger account of the title to a subcharge might refer to other charges and notices affecting only the sub-derivative title: the registration of a complicated title being thus arranged into a graduated system of mutually connected entries, to the whole series of which the public index to the freehold title would be a key.

The freehold would be the "root" of the registered title. A charge or a notice affecting the freehold title, but not extending to all the lands comprised in it, would be indexed by reference to the freehold title partially affected by it. So a charge or a notice affecting a derivative legal title, but not extending to all the lands comprised in it, would be indexed by reference to the derivative title partially affected by it: the entries and certificates showing, in each of these cases, that the charge or notice was only partial in extent.

If a charge or a notice affected lands comprised in several freehold titles, the particulars of the charge or notice would be appended to each of the freehold titles, so as to make the account of each freehold title complete in itself; the derivative title remaining, however, undivided, and being registered substantively in a single account.

If at the commencement of the register a charge or a notice were registered before registration of the freehold title, the index would adapt itself to an independent registration of the derivative title, during the suspension of the registration of the freehold title. Under such circumstances the index would be divided for the time into three columns available for reference to any one of the three ledgers; as in the following example:—

No. on Map.	Freehold Title.	Charges.	Notices.
1			
2			17
3			17
4		22	
5			
6		22	17

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It will be understood that the red ink figures in the above form refer to pages of the Charge Ledger and the Notice Ledger, at which accounts have been opened for charges and notices registered before registration of the freehold.

A complex title is a bundle of rights tied together: the Register would untie the bundle, and declare or preserve the title to each right separately. But the rights thus separately registered would be mutually dependent; for a derivative title is created by the partial destruction of the title out of which it is derived. Now this condition of mutual dependence would introduce into the registered title to land an important peculiarity; which I will explain and consider, as concisely as possible, under the head of

Registration of Title by Succession.

Succession to land not necessarily derived from the predecessor in title.

On the death of the holder of a railway share, the title of the next holder is derived, invariably, from the deceased: on the death of the holder of land this may or may not be so; presumptively it is so, but the presumption may be rebutted.

Mode of registering the succession.

Such being the state of things at present, the register would not alter it, otherwise than by providing beforehand for the effective manifestation of any causes of deviation from the ordinary rule of succession. The representative of the deceased would be registered as his successor in title, unless some competing claimant could adduce out of the register proof that the title of the deceased terminated with his life. If the representative were wrongly admitted, through inadvertence, to the succession, the legal title thus acquired by him would be subject to every equitable right appearing on the register. But it is not to be supposed that the representative would claim registration, merely for the purpose of subjecting himself to an unprofitable trusteeship. If the deceased were only tenant for life, the remainderman or reversioner would step without opposition into the title, after complying with a preliminary form imposed upon him for his own benefit. He would be asked to show his ticket, as it were, before entering, in order that his entry might be sanctioned by an authoritative recognition of his right of entry. The right of succession would devolve upon him immediately on the death of his predecessor in title; his legal proprietorship would commence from the registration of the representative's transfer to him of the certificate of title held by the deceased, or from the registration of a judicial order declaring his right to be registered as successor.

Where the title of the deceased terminates with his life the remainderman or reversioner to be registered;

otherwise the representative of the deceased: with notice on the register of the fiduciary character of his title.

If the deceased had a title extending beyond his life, his representative would be registered as his legal successor; and it would be a rule that, for the protection of beneficiaries, a notice should be entered in the name of the registrar expressive of the fiduciary character of the succession. On completion of a lawful sale of the estate, the purchaser would obtain a judicial order to strike out the notice; or a testator might declare by his will that no notice should be entered.

The executor or administrator to be the real representative.

I propose that the legal title to land should devolve upon the executor or administrator, as real representative; reverting to the principle of single heirship which prevailed in the Roman law before the commencement of the feudal system.

The foregoing statement has described, in minute detail, a system of arrangements for the registration of title to landed property under its ordinary conditions of private proprietorship, freehold tenure, and material limitation. It would be premature, in the present aspect of the question, to discuss exceptional variations; but it may be right to add a few words on

Jurisdiction in connexion with Registration.

"Court of Registration."
Mr. MacDonnell's communication

Mr. MacDonnell, to whose sound judgment it is a pleasure to defer, proposes that the Registrar should not have any judicial authority. I am willing to assent to this proposition; though differing, in form at least, from my own published opinions. All I insist upon is the provision of some accessible and inexpensive judicial authority in peculiar connexion with the Register Office.

Its summary procedure.

A competent judge might "sit at chambers" for registration business alone. His proceedings might be recorded by using books of Summonses and Orders printed in duplicate on the breadth of the page, so that the Summons or Order delivered out should be a coupon from a corresponding Summons or Order remaining in the book.

Mr. Wilson.

In a Court thus constituted the conciliatory intervention of a judicial officer of position and experience might induce the parties to pause and reflect before committing themselves to the costs of a more formal litigation.*

Its tendency to prevent expensive litigation.

I propose that the "Court of Registration" should be a Court of amalgamated legal and equitable jurisdiction.

Its amalgamated jurisdiction.

Its decisions would be subject to revision in an "action of reduction" in a Court of Law. A concurrent appellate jurisdiction might be given to the Court of Chancery, but for the expensiveness of the first step in a Chancery Suit and the utter inefficiency of written evidence.

Appeal to the Courts of Law: why not to the Court of Chancery.

The Court of Appeal would determine in each case, by a Judge's Order, what (if any) security should be given by the appellant for the costs of the appeal; and these costs would be left to the discretion of the Court of Appeal.

Costs of appeal.

The pending appeal might be introduced into the registered title by being registered as a notice.

Registration of appeal.

Concluding Remarks.

The general result of my Plan of Registration may be thus stated. It would embody the Title to Landed Property in a graduated system of movable and transferable Certificates. It would register title, without investigating it; by adopting, as the basis of the register, that presumption of ownership which is already incident, naturally and legally, to the Possession. It would register possession without altering its effect: registration of a new title acquired by possession adverse to the register might be enforced by a judicial process. On a similar principle, Incorporeal Rights, such as can now be maintained without deed, would remain valid without registration.†

General result of the Plan.

Adverse Possession.

Incorporeal Rights.

The Registered Title would be capable of adapting itself to every modification of ownership which either Law or Equity allows to be created. Every equitable title might be secured, infallibly, by a registered Notice; every legal title, being registered as a Charge, would thenceforth be recognized by the State as an integral portion of the legal proprietorship. While maintaining unimpaired the magnificent system of rights which a succession of great judges has developed, the Register would clear away the rubbish of tenures and uses by which the working of that system has hitherto been impeded.

Undiminished power of Settlement.

Rights preserved and technicalities abolished.

It would thus be by arranging the confused elements of our existing system of landed property, not by introducing a new system in its stead, that Registration would facilitate Transfer. It would do so, however, most completely. The Certificate of Title would be negotiable like a bill of exchange. The smallest plots of land might be conveyed to members of the Working Classes, at the nominal cost of an *ad valorem* transfer stamp and of the "registration stamp" on the transferee's certificate. As an article of commerce, Land would acquire a new market value. Yet the profits on capital invested in land, with a view to the business of its cultivation, might rise in a still higher proportion, if attributable to a small margin of outlay for purchase money beyond the amount of a loan taken up from a *Land Bank*, at the lowest current rate of interest, on deposit of the certificate of title.

Perfect facility of transfer.

Small Freeholds.

Increase of value.

Land Banks.

Land Currency.

Negotiable *Deposit-notes*‡, accompanied by certificates of title, and, during the period of transition, by policies of insurance, would be a species of paper currency, represented by land, and giving agricultural employment, at call, to the spare capital of the nation.

ROBT WILSON.

1 December 1856.

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* "It would be most desirable to establish a Court of Arbitration before which persons might come . . . . to state their case and be informed of the weakness or strength of their suits. This would be the cheapest reformation ever made in this country. . . . . A system of Arbitration exists in France, in Denmark, and in the maritime country of Holland. . . . . In England it is only after the parties have had their passions worked up and their purses worked down that Arbitration is thought of."—*Mr. Brougham's Speech on the State and Administration of the Law, 7th February* 1828. *From the Morning Chronicle.*

† On the subject of Incorporeal Rights, compare the provisions of the Bavarian and Austrian Registers, and of a proposed Genevese Register, Appendix to Second Report of Real Property Commissioners, pp. 444, 457, 522, and 533. See also Incumbered Estates Court Act, 12 & 13 Vict. c. 77. s. 28.

‡ See Form of Deposit Note, page 45.

Certificate of the Freehold Title. *See Page* 93. *Mr. Wilson.*

GRAVENEY, KENT.

Official Seal.

SURVEY OF 1858.

FREEHOLD CERTIFICATE, No. 40.

I certify that John Jones,
of Graveney, Farmer,
is the Freeholder of the following lands in this parish.

No. of Map.	Description.	Contents.			Date of Registration.
		Acres.	Roods.	Perches.	
1	Field - -	64	0	2	1st May 1858
2	,, - -	23	2	22	,, ,,
3	,, - -	20	1	39	,, ,,
4	,, - -	9	3	16	,, ,,
5	,, - -	5	0	36	,, ,,
9	,, -	14	1	25	,, ,,
10	,, - -	11	2	11	,, ,,
15	,, - -	0	1	19	,, ,,
16	,, - -	23	2	8	9th June 1858
19	Cottage and Yard	0	0	27	1st May 1858
20	Garden - -	0	1	36	,, ,,
21	Field - -	7	3	1	,, ,,
24	,, - -	6	3	14	,, ,,

London, 1st July 1858.

JOHN TURNER,
Registrar for the said Parish.

Mr. Wilson.

Certificate of the Freehold Title—continued.

REGISTERED CHARGES.

Date of Entry.	Reference to Charge Ledger.	No. of Charge in Certificate Book.	Nature of Document referred to by the Charge.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

Mr. Wilson.

Certificate of the Freehold Title—continued.

REGISTERED NOTICES.

Date of Entry.	Reference to Notice Ledger.	Purport of Notice.	No. of Notice in Notice Book.	Document, if any, referred to.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

Mr. Wilson.

Certificate of the Freehold Title—continued.

TRANSFERRED to _____

of _____

in consideration of _____

Signature _____

Date _____

Signature of Witness _____

Address _____

Description _____

CHARGED in favour of _____

of _____

with a _____

_____

made between _____

_____

and identified by my signature indorsed upon it.

Signature _____

Date _____

Signature of Witness _____

Address _____

Description _____

SURRENDERED for the purpose of _____

_____

Signature _____

Date _____

Signature of witness _____

Address _____

Description _____

Mr. Wilson.

Certificate of the Title to a Charge. *See Page* 109.

GRAVENEY, KENT.

Official Seal.

SURVEY OF 1858.

CHARGE CERTIFICATE, No. 240.

I certify that James Cook of Maidstone, Tanner, and Edward Hill of Maidstone, Baker, and the Registrar, are the holders of Charge No. 76*, being a charge of a Settlement dated 14 June 1858, No. 143, affecting the freehold of the following lands in this parish.

* [*Note.— The numbering of the Charge and that of the appended document is supposed to refer in each case to the first of a series of volumes. In referring to any volume after the first it would be necessary to give the No. of the volume as well as the No. of the page, thus: "Charge No. 2, 76."*]

No. of Map.	Description.	Contents.			Date of Registration.
		Acres.	Roods.	Perches.	
1	Field - -	64	0	2	1st May 1858
4	,, - -	9	3	16	,, ,,
5	,, - -	5	0	36	,, ,,
9	,, - -	14	1	25	,, ,,
15	,, - -	0	1	19	,, ,,
16	,, - -	23	2	8	9th June 1858
19	Cottage and Yard	0	0	27	1st May 1858
24	Field - -	6	3	14	,, ,,

London, 15 September, 1858.

JOHN TURNER,

Registrar for the said Parish.

Mr. Wilson.

Certificate of the Title to a Charge—continued.

PREREGISTERED CHARGES.

Date of Entry.	Reference to Charge Ledger.	No. of Charge in Certificate Book.	Nature of Document referred to by the Charge.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

PREREGISTERED NOTICES.

Date of Entry.	Reference to Notice Ledger.	Purport of Notice.	No. of Notice in Notice Book.	Document, if any, referred to.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

Mr. Wilson.

Certificate of the Title to a Charge—continued.

POSTREGISTERED CHARGES.

Date of Entry.	Reference to Charge Ledger.	No. of Charge in Certificate Book.	Nature of Document referred to by the Charge.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

POSTREGISTERED NOTICES.

Date of Entry.	Reference to Notice Ledger.	Purport of Notice.	No. of Notice in Notice Book.	Document, if any, referred to.	Its Date.	No. of Document in Document Book.	Whether affecting all or only part of the Freehold Title.

Mr. Wilson.

Certificate of the Title to a Charge—continued.

TRANSFERRED to _____

of _____

in consideration of _____

Signature _____

Date _____

Signature of Witness _____

Address _____

Description _____

CHARGED in favour of _____

of _____

with a _____

dated _____

made between _____

_____

and identified by my signature indorsed upon it.

Signature _____

Date _____

Signature of Witness _____

Address _____

Description _____

SURRENDERED for the purpose of _____

_____

Signature _____

Date _____

Signature of Witness _____

Address _____

Description _____

Mr. Wilson.

Certificate of the Title to a Notice. *See Page* 113.

Official Seal.

GRAVENEY, KENT.

SURVEY OF 1858.

NOTICE CERTIFICATE, No. 311.

I certify that William Jackson of 7, Rodney Street, Liverpool, Merchant, is the holder of Notice No. 122, of Charge No. 76, referring to a Settlement dated 14 June 1858, No. 143, affecting the freehold of the following lands in this parish.

No. of Map.	Description.	Contents.			Date of Registration.
		Acres.	Roods.	Perches.	
1	Field - -	64	0	2	1st May 1858
4	„ - -	9	3	16	„ „
5	„ - -	5	0	36	„ „
9	„ - -	14	1	25	„ „
15	„ - -	0	1	19	„ „
16	„ - -	23	2	8	9th June 1858
19	Cottage and Yard	0	0	27	1st May 1858
24	Field - -	6	3	14	„ „

London, 1 October 1858.

JOHN TURNER,

Registrar for the said Parish

Mr. Wilson.

Certificate of the Title to a Notice—continued.

TRANSFERRED to _____

of _____

Signature _____

Date _____

Signature of Witness _____

Address _____

Description _____

SURRENDERED for the purpose of _____

_____

Signature _____

Date _____

Signature of Witness _____

Address _____

Description _____

Mr. Wilson.

Form of Deposit Note. *See Page* 116.

£10 —— London, 1 July 1858.

Borrowed from The National Discount Company, Limited, on deposit of Freehold Certificates numbered 61 and 62, of Lands in the Parish of Graveney in the County of Kent, the sum of Ten Pounds, payable on the First day of January 1860, and bearing interest at the rate of four per cent. per annum, payable half yearly on the 1st January and 1st July.

HENRY PIPER.

[*The Deposit Note would imply a personal engagement by the maker to pay to the holder the principal and interest secured. A power of sale, defined and regulated by a general law, would be legally incident to the deposit, unless specially excluded by the terms of the note. The deposit note, like a promissory note, might be transferred to order, or to bearer, by a special or general indorsement. Indorsement would operate "sans recours," transferring the claim on the borrower without guaranteeing the sufficiency of the security. As the note would cost nothing but the stamp payable on it, the "land currency" might include ten pound notes, as above. It might be the practice to send the note, filled up and signed, to the Register Office, along with the certificates deposited; when, for a small advalorem fee, the Registrar would authenticate the note, by certifying at the foot of it, on a printed form appended for the purpose, the non-existence of anything affecting the title besides the matter apparent on the deposited certificates themselves. The note would not be registered, but the authentication of it at the Register Office (after the lapse of the prescribed period of transition) would assure to the holder priority over all claims not disclosed by the deposited certificates. The form of authentication might be to the following effect:—*]

FORM OF REGISTRAR'S AUTHENTICATION.

Official Seal.

The above Deposit Note having been produced at the Register Office, together with the Certificates deposited, I certify that the said Certificates, as particularized at foot, contain the whole of the registered titles to the lands comprised therein.

London, 1 July 1858.

JOHN TURNER,
Registrar for the Parish of Graveney, Kent.

SCHEDULE OF CERTIFICATES.

	No. on Map.	Description.	Contents. Acres.	Roods.	Perches.	Date of Registration.
Freehold Certificate No. 61, Graveney, Kent.	52	Field -	—	2	1	8 June 1858.
Freehold Certificate, No. 62, Graveney, Kent.	53	Field -	—	1	18	8 June 1858.
	54	Field -	—	—	22	8 June 1858.

Suggestions and Plan.

Mr. COOKSON.

Mr. Cookson.

An accurate and perfectly secure system of land transfer, which shall at the same time be simple, expeditious, and cheap, will be a valuable acquisition to the owners of land in this country, and a boon to the public at large.

If simplicity, expedition, and accuracy can be carried to the extent of giving to a purchaser of land, *immediately*, a simple and absolutely safe title, at a comparatively trifling expense, great additional value will be conferred on land.

It is believed that such a system of land transfer may be contrived, and an attempt will be made to show how, by means of a register.

It will probably be admitted to be impossible, having regard to the enormous expense and delay of such a proceeding, and of the danger of acting on *ex parte* evidence, to ascertain finally and conclusively, so as to bind all the world, by means of Commissioners or otherwise, the present state of title to and ownership of every piece of land and every incorporeal hereditament in the kingdom, as a preliminary to a simple system of land transfer.

If it were possible to do this, and if every owner in fee could be registered as owner, and if, in all other cases, trustees, to be named by the parties interested or by the Commissioners, could be registered as owners, a simple system of registration might be commenced, embracing at once all the land in the kingdom; but such a proceeding is assumed to be practically impossible.

It is also assumed that no plan will be acceptable which shall interfere with, or directly or indirectly enlarge or abridge, existing estates, rights, or interests in land, whether in possession, reversion, remainder, or expectancy. Whatever quantity or quality of estate, right, or interest any man may have in land when a new system of land transfer comes into operation, he must have afterwards, until by some act or default of his own, he alien or lose it.

In the investigation of titles to land three important questions arise:

First,—Do the title deeds disclose a clear title to the lands described in them?

Second,—Does that description of the lands comprise all the lands intended to be dealt with?

Third,—Is the actual possession or occupation of the lands consistent with the title as disclosed by the deeds?

For it must be obvious that though the deeds may show a clear title in A. to the lands described in them, these may not be the lands intended to be dealt with; and when the first and second questions are answered in the affirmative, yet, unless the person in possession is holding as the tenant of A., or such possession is shown to be consistent with the title of A., the title cannot be safely accepted.

In the absence of any special restriction in the contract for sale the purchaser is entitled to expect that a clear title, showing all the dealings for sixty years past, with all legal and equitable interests in the land, will be deduced. Experience has shown that ordinarily the deduction of a title for sixty years is necessary to give a purchaser a reasonable assurance that he may peaceably enjoy and safely sell what he has bought and paid for.

A title for the requisite period being deduced to land which *may be* that which the purchaser has bought, it must be shown that *it is* the same; the identity must be established. He must also ascertain that the *possession* of the occupier is the possession of the vendor.

The bulk of the expense incurred by both vendor and purchaser is generally occasioned by the deduction and investigation of the title for 60 years, as that title appears on the title deeds; and it is to the simplifying of the evidence of this sixty years' title that attention must be directed.

Mr. Cookson.

Under the present system, if A. purchase an estate and investigate, at great expense, the title to it in the most careful and searching manner, with the assistance of an experienced solicitor, aided by the advice of eminent counsel; and if A. afterwards sell or mortgage the estate to B., all the expense of investigation of title which was incurred for A. has to be incurred for B.; and there is no way of preserving or continuing, for the benefit of B., the labour of A.'s solicitor and counsel. For there is no evidence on which B. can rely, that A.'s solicitor has seen all the deeds, or that an accurate abstract of them has been laid before counsel, or that serious objections to the title may not have existed, which have been overlooked or waived for a pecuniary equivalent, and so on.

And thus it frequently happens that eminent contemporaneous counsel have before them successively the same title to advise upon, at longer or shorter intervals, in the course of their professional career.

Again, a large estate held under one title may be divided for sale into a great many lots; the purchaser of each lot has his own solicitor by whom the title is to be investigated on his behalf. An abstract of the title is delivered to each purchaser, and there may thus be fifty different solicitors, assisted by fifty different counsel, engaged at the same time in the investigation of the same title, to the several lots into which one estate has been divided; and sometimes the same counsel is consulted again and again on the same title. In this case there is an advantage to the counsel, but the expense to the purchasers is not diminished.

In the present state of the law, land is capable of being limited to successive persons for life and to unborn persons in remainder, and in various other ways; and charges may be created upon it, for jointuring widows and portioning children, and for numerous other purposes; and no desire is felt to restrain or limit the power which an owner now possesses over his land. Indeed, the desire would rather be to increase his powers and facilitate their exercise.

Stock also is capable of being settled on successive persons for life, and on unborn persons in remainder, and in various other ways; and charges may be created on it, for jointuring widows and portioning children, and for various other purposes. In such cases the stock is transferred into the names of trustees, who hold it on the trusts declared by a separate instrument; but the instrument is not noticed in the transfer books; and the trustees, if not restrained by distringas, may at any time sell the stock, and the purchaser will have a good title to it against all the world.

It has been frequently objected that any system of transfer of land, in any degree resembling the transfer of stock, would open a door for fraud; and that under such a system, estates, when in settlement, may be lost altogether by the misconduct of the trustees.

An objection of this kind must not be disposed of by *à priori* reasoning, and if it be weighed in the balance of actual experience, it will probably be found very unsubstantial.

Under the present system, nearly all well-drawn settlements of landed estates in this country contain clauses empowering the trustees to sell the estates, and to invest the purchase money in other estates to be settled to the same uses. The power is usually to be exercised with the concurrence of the tenant for life, if living, but if dead, at the sole discretion of the trustees; and in either case the purchase money remains under the control of the trustees until reinvested in the purchase of land.

And it must not be forgotten that a very large portion of the land in this country is in mortgage; and that, inasmuch as, under the present system, a mortgagee usually has a power of sale, which he may exercise without the concurrence or knowledge of the mortgagor, nearly all the land in mortgage is, and has long been, in the position in which it is alleged that land cannot be safely placed! Experience has shown that the power of sale vested in the mortgagee is very rarely abused, and it is uniformly given without hesitation.

It is further to be observed, that a very large proportion, probably two thirds at the least of mortgages on land are held by persons who are merely trustees of the money, and have no beneficial interest in it. There can be no doubt that many millions of money are at this moment invested on mortgage where the mortgagees are trustees under settlements or wills, and have no beneficial interest in the money. Such mortgagees are in fact trustees of the land subject to the mortgage for one party, and trustees of the fund secured by the mortgage

Mr. Cookson.

for another; and the land and the money are both unhesitatingly placed in the position in which it is alleged that land cannot be safely put.

Neither must it be forgotten that there are nearly 800,000,000*l.* of money in the funds, of which a full proportion (probably one half) is already in the position in which it is alleged that land cannot be safely placed; and that millions on millions represented by shares in railways, and canals, and docks, and other public companies, are similarly circumstanced. What has been found practically safe for them cannot, it is presumed, be otherwise than safe for land.

But, in addition to all these considerations, the system of distringas, subsequently recommended to be applied to land transfers, will completely protect the landholder from injury. It will be his own fault if he ever suffer under the proposed system from abuse of power by a trustee or mortgagee.

It is proposed that an office shall be opened for receiving, classifying, indexing, and filing all transfers of land. That there shall be an index for each county, and an alphabetical index of all the parishes in each county; with an alphabetical index for each parish, to contain the names of all persons who shall register transfers of land in that parish. That on and after the day named, where any dealing with land takes place by a person entitled to or having power over the whole fee simple, a transfer shall be executed, conveying the whole fee simple to one or more persons absolutely. That such transfer shall be on parchment in original and duplicate, in a simple printed form, and shall express the true consideration, and shall transfer the property described in the schedule to the purchaser, or mortgagee, or trustees, who shall thereupon become the registered owner. That both parties shall sign the instruments, in order that the signature of the purchaser may be on the register as a check on any future transfer by him. That both parts shall be lodged at the Transfer Office, and compared with each other there, and that the duplicate shall be filed and entered in the index; and the original returned, stamped as registered, to the registered owner; or the original may be filed and the duplicate returned. That it shall be competent for, if not obligatory on, parties to add a map to the schedule, for better describing the lands. That the validity of the title of the first registered owner shall depend, as it does now, on the validity of the title of the party making the transfer; so that the first registered owner must investigate the title—the legal and equitable title—as he does now. That when the first registered owner shall afterwards sell to another, say at the end of ten or twenty years, the purchaser will see on the register the evidence of the title for the ten or twenty years, and for that time he will require no other evidence of ownership than the register; but as a title for ten or twenty years only will not satisfy him, he must carry back his investigation beyond the commencement of the register, to see that the first transfer was made by a party duly authorized—legally and equitably authorized—to make it.

When, under this system, land shall have been transferred for fifty or sixty years, there will be a sufficient title on the register, and thenceforward the registered ownership alone will be referred to; and, in the meantime, every year will bring a purchaser nearer and nearer to this result, and year by year the expense attending the transfer of land will be diminished.

The system of restraining transfers of stock by distringas should be adapted to restraining the transfers of land; and it will be desirable that the Registrar himself, or the Assistant Registrar, should be the officer by whom the restraint shall be authorized, and not as at present an officer of the Court of Chancery, and that the Registrar or Assistant should himself enter the restraint in the index.

It may be objected, that under the proposed system a mortgagee would have power to sell the mortgaged estate. The answer to this is, first, that under the present system the mortgagee usually has the legal fee vested in him with an absolute power of sale; and, secondly, that the mortgagor may lodge a distringas, which will prevent a sale without due notice.

Under this system equitable mortgages may be created with facility and dispatch. An equitable mortgagee may obtain a distringas if he hold a simple undertaking of the owner to grant a mortgage when required.

Provision must be made for devises, where the whole ownership is not devised to one or more persons, either beneficially or as trustees. The executors may, in such cases, be registered as owners, and a distringas may be lodged for the protection of the parites beneficially interested.

Mr. Cookson

In cases of intestacy, it is not proposed that the Registrar should decide on claims of heirship; such claims must be referred to the Courts of Law or Equity, where conflicting claims are preferred, and a purchaser from an heir would require satisfactory evidence of heirship; judicial advertisements for heirs might be inserted in the *Gazette*, and the claim might be referred to the Registrar, and after judicial publication of his report the claimant's title might be held good, unless questioned within a limited period.

A separate register would be kept of leases, except occupation leases, for terms not exceeding twenty-one years, and a note should be made in the entry of the absolute ownership, referring to the lease register to give notice of its existence. A building lease for ninety-nine years is subject to as many dealings during its continuance as the fee simple during the same period, and should therefore be registered under a distinct head.

Separate entries would be made on the register of absolute ownership of all fee-farm rentcharges, and other incorporeal hereditaments, and reference would be made to them on the register of the ownership of the land.

It has not been thought necessary, for carrying out this plan, to suggest any alteration in the existing system with reference to Crown Debts and Judgments, though that system is susceptible of great improvement. The present plan of registry of Crown Debts and Judgments may be continued; or the register may be transferred to the Land Registry. It would, however, tend to greater simplicity if a distringas were required in order to render a Crown Debt or Judgment Debt a charge on land.

The system will have the effect of keeping all family arrangements from the public eye, as all family arrangements with respect to stock are kept from the public eye. But, as a further protection against impertinent curiosity, it may be prudent that no search should be permitted, or information given, except on a request in writing from a solicitor, stating why and for whom he applies, similar to the request to the Accountant General of the Court for Chancery for information as to the state of accounts.

The advantages expected to result from the proposed system are, that without any additional expense to the landowners the whole land of the country will gradually, but certainly, come upon the register; and that eventually the only title to land which a purchaser can require will be a succession of simple transfers, such as have been described, to be found on the register.

It may be objected that the effect of this scheme would be to make all interests liable to be litigated equitable interests, and to compel all litigants respecting land to resort to the Court of Chancery. To this objection an answer is suggested by the Report of the Commissioners appointed by Her Majesty to inquire into the process, practice, and system of pleading in the Court of Chancery. In that document the following remarkable passages occur:—

"The mischiefs which arise from the system of several distinct Courts proceeding on distinct and in some cases on antagonistic principles are extensive and deep rooted."—"It happens that, in many cases, parties in the course of the same litigation are driven backwards and forwards from Courts of Law to Courts of Equity, and from Courts of Equity to Courts of Law."—"It is obviously most desirable that in every case the Court which has the cognizance of the matter in dispute should be able to give complete relief."—"We have arrived at the conclusion that, without abolishing the distinction between Law and Equity, or blending the Courts into one Court of universal jurisdiction, a practical and effectual remedy for many of the evils in question may be found in such a transfer or blending of jurisdiction, coupled with such other practical amendments as will render each Court competent to administer complete justice in the cases which fall under its cognizance. We think that the jurisdiction now exercised by Courts of Equity may be conferred upon Courts of Law, and that the jurisdiction now exercised by Courts of Law may be conferred upon Courts of Equity to such an extent as to render both Courts competent to administer entire justice without parties in the one Court being obliged to resort to the aid of the other."

The plan, so far as it has yet been explained, is one of slow operation, and it will be a long time before titles can attain the simplicity which is aimed at by its operation. But if for any reason a landowner desire to be entered on the register with a warranted title, as when contemplating the sale of land subdivided into numerous lots for building purposes, he may apply to the Registrar to have his title investigated by counsel and solicitor, to be named by the

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Registrar, and if the title be found perfectly marketable, the owner may be entered on the register as owner, with a warranted title. The owners in such case will of course pay all the expenses incurred in the investigation of the title, and a fee on registration, as a premium for the warranty.

An apprehension has been expressed that the index would become wholly unmanageable in a very few years, but this apprehension is not well founded. The indexes of the public funds are so far from being unmanageable, that there is absolutely no difficulty in finding, in a few minutes, any account which may be asked for; and the indexes to the public funds are simply alphabetical lists of all persons in whose names any stock is standing. And there is no subdivision; whereas in the proposed indexes for land-transfer there will be a separate index for each county, and that index again will be subdivided into parishes, so that if a person wishes to ascertain whether A. is possessed of any land in any parish, he will merely have to search the index of that parish under the letter A; and if the landowners of the most populous parish in England were to be arranged alphabetically, there would be very little difficulty in finding the individual name.

It would, moreover, be very easy to subdivide the index of each letter, by classifying not only by the first letter of the name, but by the first vowel in the name, as, for instance, "Throgmorton" would be found under the letter "T" and the subdivision "T.o." This system is observed with advantage by the Bank of England.

An objection has also been started, that the discussion and inquiry which would frequently arise on the rights and interests of parties having stop-orders would occasion the same expense as now.

This objection is not well founded. Under the present system not only have all parties legally and equitably interested in land to adjust their respective claims, but all the successive purchasers and mortgagees of that land for fifty or sixty years to come have, in their turn, to see that those claims were properly adjusted. Under the proposed system the purchaser or mortgagee would have nothing whatever to do with these questions. Whilst a "stop" exists the land will be tied up, and when the "stop" is gone the land may be transferred. The equities under stop-orders or distringases are adjusted once and for ever, and leave no stain or encumberance on the title; but equities under the existing system live for half a century, and obtrude themselves upon every one who, during that period, may have to do with the land.

A question remains to be mentioned which has not yet been here alluded to, but which has been much discussed with reference to the registration of Assurances. Shall the registry be central or local, or both central and local? Or, to put the question more accurately, shall there be—

One central registry for the whole kingdom; or,

Several central county registries for the several subdivisions of the whole kingdom; or,

One central registry for the whole kingdom, with branch offices in the principal towns throughout the kingdom?

A central registry for the whole kingdom would, of course, be established in the metropolis; central county registries would probably be in the largest, or most central, or most generally accessible town in the county.

The advantages of a metropolitan registry over county registries appear to be many and manifest.

1st. Under a metropolitan registry a uniformity of system throughout the whole kingdom would be established, which would hardly be attainable, or at any rate maintained, in several county registries.

2d. One metropolitan registry would be much less expensive than from fifty to sixty county registries. For in each county registry there would necessarily be an efficient registrar, and a deputy competent to discharge the duties of the registrar during his absence from illness or other inevitable cause.

3d. It is believed that one metropolitan registry, under the superintendence of a registrar of high professional attainments and experience, and efficient deputies and subordinate officers, would inspire more confidence into the land owners of the country than several county registrars would do.

4th. The registers of judgments, bankruptcies, and insolvencies must necessarily be metropolitan.

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5th. The suggested system of distringas will be more efficiently worked, and uniformity of practice will be more securely preserved, in one metropolitan registry than in numerous county registries, and on the efficiency of the distringas will in a great measure depend the efficiency of the whole system.

6th. A metropolitan registry would be less expensive to parties employing solicitors resident in the country. Every solicitor in the country, without exception, has an agent in London with whom he is in daily confidential unreserved communication, and no additional expense, or the smallest additional expense possible, is incurred by the client by reason of the employment of a London Agent. The remuneration of a solicitor is on a fixed scale, and, as to the business transacted by the Agent, the remuneration is divided between the agent and country solicitor. They are, as regards the particular transaction, very much in the position of partners residing in different towns. Through his London agent, therefore, the country solicitor might obtain from the metropolitan registry all the required information, at the same cost to the client as if the registry were in the town where the country solicitor practised. But the country solicitor rarely has a confidential agent in any other place than London, and if he did not reside in the register town he would be obliged to employ a local solicitor, or to make a journey to the registry for the purpose of search or registry, and it would often happen, where secresy was desired, that he would find it his duty to incur the expense of a journey.

7th. With country registries it would constantly occur, that solicitors in distant parts of the country, as well as solicitors in the metropolis, would have no knowledge of the solicitors in the particular town where the county registry might be. Many of the solicitors in large practice in London have clients who are landowners in many of the counties in England, and they would be much inconvenienced and embarrassed by a system of county registries.

8th. The ordinary communication between London and country towns, to say nothing of the telegraph, is often much more rapid and regular than between one country town and another, and of course the postage of letters is the same whatever the distance may be.

Suggestions and Plan.

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The general nature of the scheme for the registration and transfer of land contained in the following clauses will be made more intelligible by a short explanation.

1. Every registration of land is voluntary, but land once placed upon the register cannot be taken off again, and must ever afterwards be transferred by means of the register.

2. No person other than an owner of a legal estate in fee-simple, to be capable of registering his land.

3. Any person claiming to be entitled in fee-simple, or having lands conveyed to him in fee, may, upon making out a *primâ facie* title to the Registrar, place his land upon the register.

4. Such regulations can in no way prejudice any right to the land accrued at the time of registration not vested in the person so entering the land.

5. All estates or interests acquired in land after registration, shall be subject to this condition, viz., that a transfer of the land by the person in whose name it stands shall utterly defeat such estates and interests.

6. Persons becoming interested in, or entitled to registered lands, may protect their rights by *caveats*.

7. Settlements of registered land may be deposited with the Registrar, with a direction that he shall not permit a transfer without the consent of all persons interested under the settlement or by decree of a Court of Equity.

8. Such a deposit shall not affect a purchaser who should obtain a transfer.

The result of this scheme is that the title of registered lands to a purchaser would in a few years become perfectly simple and safe.

Lapse of time would continually diminish the chance of incumbrances not known at the time of registration, being discovered. The transfer would override all estates created subsequent to the registration.

The value of land, concerning which a safe and inexpensive title could be given, would be greater in the market than the value of other lands. Hence a purchaser would have a direct interest in registering his land. The act only applying to land held in fee-simple would come gradually into operation. No great establishment in the first instance would be required.

It should be the duty of the Registrar to collect the most perfect maps; and registered land should be defined by careful plans, references, and descriptions.

Improvements and extensions of the act might be made from time to time as experience dictated, and as the public became familiar with the working of the scheme.

PROPOSED CLAUSES.

(Entry upon the Register by a Person entitled to Land.)

Entry by the owner.

I.—After the commencement of registration under this Act, any person claiming to be entitled to any land in fee-simple in possession, free from all incumbrances, or subject only to certain specified incumbrances, may deliver to the Registrar of the district wherein such land is situate a statement of his claim, with a description of the lands, in the form required by the regulations in force in the office for the time being, and a statement of his wish that the same may be entered in his name on the Index of Transfer. And in like manner any two or more persons claiming together the whole fee-simple of any land may deliver in their claim to the Registrar, with a statement of their wish that the same may be entered on the Index, in the name or names of any one or more of them. In either case, subject to the other provisions herein contained, the Registrar shall enter the land accordingly, in the first Form contained in the First Schedule. And upon such entry being duly completed

and signed, every estate and interest at law or in equity to which the person or persons signing the entry was or were at the date thereof entitled, or to which he or they could by the exercise of any power have then become entitled, shall vest in the person or persons named on the Index: Provided always, that such entry shall not affect the right or interest in the land to which any person not signing the entry is then entitled, nor the right or interest of any person born or unborn accruing subsequent to the date of the entry, but under an instrument duly executed before the date of such entry.

Entry on sale or conveyance.

II.—After the commencement of registration under this Act any person or persons claiming the right to convey the fee-simple of any land may deliver at the Register Office of the district wherein such land is situate a statement in writing, signed by him or them, stating his or their right to convey the fee-simple thereof free from all claims whatsoever therein, or subject only to such claims as are specified in such statement, with the required description thereof, and may request that such lands may be entered upon the Index in the name or names of any person or persons therein mentioned. Thereupon the Registrar, subject to the provisions herein contained, shall cause an entry of such lands to be made on the said Index in the second Form contained in the First Schedule hereto, and every such entry, when duly executed by the persons named therein of the first part, shall vest in the person or persons named therein of the second part every right, estate, or interest at law or in equity in such lands of or to which the person or persons who have executed the same was or were entitled at the time of the date thereof, or could by the execution of any power have then created or conveyed: Provided always, that such entry shall not affect the right or interest in the land to which any person not signing the same is then entitled, nor the right or interest of any person born or unborn, accruing subsequent to the date of the transfer, but under an instrument duly executed before the date thereof.

Provisions to secure accuracy of entry.

III.—Whensoever an application shall be made, under the provisions hereinbefore contained, to place any land upon the Register for the first time, the person or persons so applying shall make an affidavit that, to the best of their belief, the facts stated in the application are true; and it shall be lawful for the Registrar to call for the production of any document or the proof of any fact he may deem necessary; and if such document be not produced, or on being produced be not satisfactory, or if proof of such fact be not given, it shall be lawful for such Registrar to refuse to enter the land.

IV.—Whensoever, under the last Section, the Registrar shall have refused to enter any land, it shall be lawful for the person who has made application for such entry to petition the High Court of Chancery in a summary way, without notice, for an order directing the Registrar to make an entry concerning the land; and thereupon the said Court may, if it is satisfied with the evidence produced on the hearing of such petition, make an order to that effect, which it shall be the duty of the Registrar to obey.

Devolution on death.

V.—Whensoever, under the provisions herein contained, any land shall be entered in the Index in the names of two or more persons, and one of such persons shall die, all the rights, estates, and powers in the land of the person so dying incident to such entry, shall devolve upon the survivor or survivors, who shall have the same rights, estates, and powers concerning the land as if his or their names had been alone entered upon the Index. And whensoever the single survivor of the persons named in an entry shall die, the rights, estates, and powers in the land shall devolve upon his personal representative or representatives: Provided always, that, subject to the power hereby conferred of transferring the lands, no such devolution or representation shall affect the rights or interests of any devisee or heir, or of any other person therein.

Transfer by persons in whose names land stands.

VI. Whensoever, under the provisions aforesaid, any land shall be duly entered upon the Register, the person or perons in whose name or names it is so entered may deliver at the Register Office a statement in writing, requesting that such land or any specified part thereof may be transferred on the Index to any other person or persons; and thereupon the Registrar, subject to the

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provisions herein contained, shall cause a transfer of the lands described in such statement to be prepared on the Index of Transfers in the third Form contained in the First Schedule hereto. And every such transfer, when executed by the person or persons in whose name or names the land then stands on the Register, shall vest in the person or persons to whom the same is so transferred all the estate, right, and interest in the land which vested at the original entry thereof, or which have subsequently accrued to the person or persons executing the same.

Transfer by order of Court of Chancery.

VII.—Any Judge of the Court of Chancery may make an order upon the Registrar in any Cause, Information, or Petition duly presented under the general practice of the Court, directing him to transfer into the name or names of any person or persons mentioned in such order, or into the name of the Accountant-General of the said Court of Chancery, any lands entered on the Index of Transfers, or directing the said Registrar not to permit until further order the transfer by any person or persons of any land mentioned in such order, and described with reference to the entry thereof, and the name of the person in whom the same stands. And the said Registrar, on being served with any order requiring him to transfer any lands in manner aforesaid, shall make a transfer thereof in such one of the fourth or fifth Forms contained in the First Schedule hereto, as the case requires.

Effect of a Transfer.

VIII.—Lands transferred under this Act shall be subject to all estates, rights, interests, and claims, corporeal and incorporeal, existing at the time of the original entry thereof, in any person other than the parties to such entry, or afterwards accruing under any instrument executed previous to the date of the entry, and to any lease for a term of years not exceeding twenty-one years, at a beneficial rent granted without fine or premium, to commence at not less than three calendar months from the date thereof, and to any incorporeal right acquired otherwise than by deed subsequent to the original entry, and shall be subject to the estate, right, or interest therein of any person whose estate, right, or interest has been attempted to be transferred by forgery upon the Index, and to the estate, right, or interest therein of any person who has executed any transfer thereon during his legal incapacity, or within six months after he has been duly adjudged a bankrupt or declared an insolvent; and subject thereto every person in whose name such lands stand in the said Index shall hold the same free from all estates, rights, interests, or claims thereon whatsoever not mentioned in the description thereof on the Register, either of Her Majesty, Her heirs and successors, or of any person or persons whomsoever, other than claims arising in consequence of any act done or instrument executed by himself, or by any person of whom he is the personal representative, notwithstanding he has direct notice at the time of the completion of such transfer of any estate, right, interest, or claim from which such lands are so freed as aforesaid.

Transfer by assignees.

IX.—The assignees of any bankrupt in England or Ireland, or the trustees of any bankrupt in Scotland, or the assignees of any insolvent debtor, may deliver at the said Register Office a statement in writing under their hands, requesting that any lands therein mentioned standing upon the Index of Transfers in the name of the bankrupt or insolvent, either alone or jointly with any other person, may be transferred thereon into their names, either solely or jointly with such other person as the case may be; and thereupon, and upon a declaration by such assignees or trustees that to the best of their belief such bankrupt or insolvent is entitled to such lands beneficially and not as a trustee, the Registrar shall transfer such lands upon the Index of Transfers into the names of such assignees or trustees solely or jointly with such other person as the case may be, and shall make such transfer in the third Form contained in the Second Schedule hereto: Provided always, that such transfer shall not affect the right or interest of any person other than the said bankrupt or insolvent, and the assignees or trustees shall be subject to all the same restrictions with respect to any subsequent transfer of the land that the bankrupt or insolvent would have been subject to.

Transfer to a new head.

X.—Any person or persons in whose name or names any lands stand upon the Index of Transfers may deliver at the said Register Office a statement in

writing, signed by him or them, requesting that such lands, or any of them, described in the manner required by the First Schedule hereto, may be transferred to any other head on the said Index in their names: and thereupon the said Registrar, subject to the provisions herein contained, shall transfer the lands to which the application relates into the same name or names under a new head upon the said Index, formed by reference to the descriptions delivered at the said office, in conformity with such application, and shall make such transfer in the first Form contained in the Second Schedule hereto. *Mr. Headlam.*

XI.—Whenever any person or any of the persons in whose name or names any lands stand upon the Index shall die, the person or persons in whom, either by survivorship or by representation, such lands uner the provisions of this Act devolve, may deliver at the said Register Office a statement in writing, signed by him or them, requesting that such lands may be transferred into his or their name or names upon the said Index: and thereupon the said Registrar, on satisfactory proof being adduced of the death of the person or persons who have so died, shall, subject to the right of any inhibition of any person claiming, by devise or descent, and other provisions herein contained, transfer such lands on the said Index, under the head under which they stand, into the name or names of the person or persons making such application, and shall make such transfer in the second Form contained in the Second Schedule hereto. Transfers on death.

XII.—Every transfer made by the said Registrar under the order of the Court of Chancery, under Section VII., into the name or names of any person other than the Accountant-General, shall have the same effect as a transfer under Section II., duly executed by the person in whose name any land stands; and every transfer made under the order of the Court of Chancery into the name of the Accountant-General shall vest in him and his successors for the time being all the estates, rights, and powers concerning the land incident to a transfer duly executed under the provisions herein-before contained. Effect of Transfers by order of Court of Chancery.

XIII.—Every transfer relating to all the land comprised under one head on the Index shall be entered under that head, and every transfer relating to part only of the land comprised under a head on the Index shall be entered under a new head. Mode of entering Transfers.

XIV.—Whenever any lands forming part of any head on the Index of Transfers are transferred to another head thereon, and no transfer is made of the remainder of such lands to any other head on the said Index by the direction of the person or persons in whose names the lands stand, the said Registrar shall transfer the remainder of such lands to a new head upon the said Index comprising such lands only, and formed in the manner deemed most convenient by the Registrar.

XV.—Every person to whom any lands have been transferred upon the Index of Transfers shall have an action on the case against the person or persons on whose application such lands were originally placed thereon, his or their heirs, executors, or administrators, for any material error or omission in the statement hereby required to be delivered at the said office on the occasion of the original entry or transfer thereof. Right of action for mis-statements.

(For facilitating the execution of Entries or Transfers upon the Index of Transfers, and reference thereto.)

XVI.—Any person may appoint an attorney or attorneys to execute for him any entry or transfer of lands under this Act; and the execution of an entry or transfer by an attorney or attorneys appointed under a power of attorney, in conformity with any regulations for the purpose then in force under this Act, shall have the same effect as an execution of such entry or transfer by the person himself would have had. Execution of entry or Transfer by attorney.

XVII.—The said Registrar shall be a perpetual Commissioner for taking the acknowledgments of married women to deeds executed by them under the Act passed in the fourth year of His Majesty King William IV., intituled "An Act Registrar to be Commissioner for taking acknowledgment of

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execution of transfers by married women.

for the Abolition of Fines and Recoveries, and the Substitution of more simple Modes of Assurance;" and an entry or transfer upon the Index shall be taken to be deeds within the meaning of the said Act: and the provisions of the said Act shall apply to all such entries or transfers. And a transfer acknowledged upon the said Index by any married woman, and a transfer executed thereon by the person or persons duly appointed her attorney or attorneys by a power of attorney so acknowledged, shall be as effectual to pass all the estate, right, or interest of the married woman by whom the same is executed in the lands to which the same relates as if she had been then unmarried.

Power to require inhibitions to be entered.

XVIII.—After the entry of any lands upon the Register, it shall be lawful for any person acquiring any interest in or charge upon such lands, either in his own right or as trustee for another, to deliver a requisition in writing under his hand at the Register Office requiring an inhibition to be entered in the Index of Transfers prohibiting any transfer of such lands without notice being first given by the Registrar to him, or some person on his behalf, at some place therein mentioned within the United Kingdom of Great Britain and Ireland, and from time to time, by writing under his hand, to vary the place so appointed. Every such requisition shall specify the lands to which the same relates by the description thereof upon the Register, and shall state the persons in whose names all the land is entered, and shall be supported by an affidavit describing the nature of the instrument under which the claim is made, and containing a declaration by the deponent that he believes himself to be interested in the land under such instrument.

XIX.—The Attorney-General for the time being may, on the ground of any inquisition, obligation, or speciality to Her Majesty, Her heirs or successors, deliver at the said Register Office a writing, under his hand, requiring an inhibition to be entered prohibiting the transfer of any lands described by reference to the entry thereof in the names of the persons in whom they stand.

XX.—On the receipt of any such requisition, the Registrar shall, in the manner and place deemed by him to be most convenient for reference, make a note stating the names of the persons by whom such requisition is made, and the material particulars thereof, and shall not permit any transfer of the lands affected by the inhibition to be made whilst the same continues in force.

XXI.—Any person in whose name any land stands upon the register may deliver at the Register Office a writing under his hand requiring the Registrar to cancel any inhibition that has been entered; and the Registrar, within two days after such delivery, shall cause a notice to the person in whose name the requisition was entered to be served upon him, or to be left at the place mentioned in the requisition, stating that on the expiration of thirty days after the day on which the notice is so served or left the inhibition will be cancelled, unless an order of the Court of Chancery restraining the cancelling is served at the office within that time; and at the expiration of the time mentioned in such notice, if no order to that effect has been served, the Registrar shall cancel the inhibition by writing across the entry thereof the word "cancelled," and affixing his signature thereto and the date.

XXII.—Any person on whose requisition an inhibition has been entered concerning any registered land, or any person claiming under him, may apply to the Court of Chancery, by petition in a summary way, for an order to restrain the Registrar from cancelling the entry of such inhibition, and serve such petition on the person in whose name the land is registered, and thereupon the Judge may discharge such petition, or allow the same to stand over for further evidence, or make such order thereon and award such costs of the application as seem to him just.

Power to enter a deed.

XXIII.—Whensoever any deed, will, or other instrument concerning any land entered upon the Register shall have been executed after the date of the entry, and shall have come into operation, it shall be lawful for the person in whose name the land stands to deliver a copy of such instrument to the

instrument to the Registrar, to be filed in the said office, with a notice to the Registrar that no transfer of the lands is to be effected unless he is satisfied that the same is made with the consent of all the persons interested for the time being under such instrument, or with the consent of any specified individuals or class of persons interested thereunder; and it shall be the duty of the Registrar to comply with the requisitions of such notice, but he shall not be liable for any error or omission in so doing, unless the same be fraudulent or wilful, nor shall the rights incident to any transfer, as hereintofore provided, be in any manner affected by the deposit of any such instrument: Provided always, that nothing in this section contained shall prevent any person interested under such instrument entering an inhibition with respect to the transfer of such lands should he so think fit.

Entry not to affect right to create legal or equitable estates in lands.

XXIV.—The entry upon the Registrar of any lands under the provisions hereintofore contained shall not affect the power of any person interested therein to create or limit any estate, legal or equitable, by deed or will or otherwise, in such lands, nor alter the incidents of any such estate, at law or in equity, during the continuance thereof: Provided that every such estate shall be subject to the power of transfer hereby given to the persons in whose name the lands stand upon the Register, and that every such transfer shall operate as a complete revocation of every estate so created or limited.

As to incorporeal rights.

XXV.—Any person who becomes entitled to any incorporeal right or easement other than an annuity or rentcharge, after the entry of any lands under any instrument executed after such entry by the persons in whose names the lands stand on the Register, may produce such deed, and deposit the same or a copy thereof at the office, and thereupon the Registrar, if satisfied as to such execution, shall signify upon the description of such lands the existence of such right or easement, and every transferee shall hold the same subject to the rights created by such deed and entered on such description.

(As to the Stamp Duty upon entries and transfers on the Index of Transfers.)

XXVI.—Every entry of any lands on the Index of Transfers, and every transfer therein made in form contained in the Second Schedule hereto, other than a transfer made without valuable consideration to an heir, devisee, or personal representative of any deceased person, or upon any devolution of interest by suvivorship, shall pay stamp duty as a conveyance in fee-simple of the lands comprised therein, and the said Registrar shall not permit any entry or transfer to be executed until the duty (if any) payable thereon has been paid; and the said Registrar shall sign upon, or in the margin of, every entry or transfer liable to pay stamp duty, a receipt for the duty paid in respect thereof; and upon, or in the margin of every transfer exempt from stamp duty, a declaration that the same is exempt from stamp duty: and every entry or transfer whereon, or in the margin whereof, such receipt or declaration is so signed, shall be receivable in evidence without any stamp being affixed thereto.

XXVII.—The said Registrar shall account for all moneys received by him for stamp duty, under the provisions herein contained, to the Commissioners of Inland Revenue, and pay over all such moneys in such manner and at such times as they appoint.

XXVIII.—The entry of any lands in the Index of Transfers, under the First Section, and all transfers made in any form contained in the Third Schedule hereto, and all statements and requisitions hereby required to be delivered at the said Register Office for the purposes of this Act, and all copies or extracts hereby authorized to be made, and all certificates hereby authorized to be given, shall be free from stamp duty.

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SCHEDULES REFERRED TO IN THE FOREGOING ACT.

Schedleue I.

Forms of Entry and of Transfers producing a Change of Ownership upon the Index of Transfers:

1. Form of Entry in name of owner:

I (or we), [insert name and addition of each person by whom the application for the entry is made] hereby declare that I (or we) desire to have the lands comprised in the description referred to above, entered upon the Index of Transfers of Lands in my (or our) name (or names).

Signatures (Seal.)

Witness to execution,

Date of last signature,

Reference to instruments (if any) showing previous title deposited in the said Register Office.

2. Form of Entry on Sale or Conveyance:

I (or we), [insert names and additions of the persons in whose application the entry is made] in consideration of the sum of £ paid to me (or us) by , [insert names and additions of the persons by whom the consideration is to be paid] hereby grant the lands comprised in the description referred to above, to [insert names and additions of the persons in whose names the transfer is made].

Signatures (Seal.)

Witness to execution,

Date of last signature,

Reference to instruments (if any) showing previous title deposited in the Register Office.

3. Ordinary Form of subsequent Transfer:

I (or we), [insert names and additions of the persons in whose names the hereditaments stand] in consideration of £ paid to me (or us) by [insert names and additions of the persons by whom the consideration is paid] hereby transfer the lands comprised in the description referred to above, to [insert names and additions of the persons in whose names the transfer is made].

Signatures (Seal.)

Witness to execution,

Date of last signature.

4. Form of Transfer by Registrar under order of the Court of Chancery into the names of any persons other than the Accountant-General:

I., A. B., Registrar of Lands, in pursuance of an order of the High Court of Chancery, dated the day of , whereof a copy, so far as concerns the lands forming this head, is contained in [insert No. of Reference to the order] hereby transfer the lands comprised in the description referred to above. [Insert names and additions of the persons into whose names the transfer is ordered to be made.]

Signature (Seal of Office.)

Witness to execution,

Date of execution,

5. Form of Transfer by Registrar under order of the Court of Chancery into the name of the Accountant-General: *Mr. Headlam*

I, A. B., Registrar of Lands, in pursuance of an order of the High Court of Chancery, dated the day , whereof a copy, so far as concerns the lands forming this head, is contained in [insert No. of Reference to the order], hereby transfer the lands comprised in the description referred to above, to the Accountant-General for the time being of the said Court.

Signature (Seal of Office.)

Witness to Execution,

Date of Execution,

SCHEDULE II.

Forms of Transfer not producing a Change of Ownership on the Index of Transfers:—

1. Transfer of hereditaments to a new head, on the application of the persons in whose names they stand:

I, A. B., Registrar of Lands, hereby transfer the lands comprised in the description, No. , [insert reference to description of the lands transferred] into the name (or names) of [insert names and additions of the persons in whose names the hereditaments stand] on his (her or their) application.

Witness to Signature

Date of Signature

2. Transfer on the application of survivor or executors into their names:

I, A. B., Registrar of Lands, hereby transfer the lands comprised in the description referred to above into the name (or names) of [insert names and additions of the persons into whose names the transfer is made], on his (her or their) application as the [insert statement of the character in which the application is made].

Witness to Signature

Signature

Date of Signature

Reference to evidence of deaths adduced on the occasion of the transfer.

3. Transfer on the application of assignees or trustees of a bankrupt:

I, A. B., Registrar of Lands, on the application of [insert names and additions of the assignees or trustees], the assignees (or trustees, assignee or trustee) of [insert names and additions of the bankrupt or insolvent], appointed by an order of the [insert the court by which the order is made and the date], whereof a copy is contained in [insert reference to the order], hereby transfer the lands comprised in the description referred to above, into the names (or name) of the said [insert names of the persons into whose names the transfer is made].

Witness to Signature Signature

Date of Signature

Appendix, Part B.

Sketches of Bills by Mr. W. D. Lewis.

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No. 1.—Sketch of a Bill to simplify the Title to Real Property in England, and generally to amend the Law relating thereto - - - - - - - 142

No. 2.—Sketch of a Bill to facilitate the Transfer of Landed Property in England, and to establish a Register of the Title to such Property - - - - - 158

No. 1.—Sketch of a Bill to simplify the Title to Real Property in England, and generally to amend the Law relating thereto.—*By Mr. W. D. Lewis.*

[*For convenience, and so as to avoid confusion in reference to the different state of the law in the two countries, the Bill is confined to England, but the scheme of it will be equally and even more readily applicable to Ireland.*]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation clause.

I. That in the construction of this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; that is to say,

Words importing the singular number only shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender only shall include females:

The word "lands" shall extend to manors, advowsons, messuages, lands, rents, and hereditaments, whether corporeal or incorporeal, and to any undivided share thereof:

The word "limitation" shall extend to any clause, provision, matter, or words in an instrument by which any person is or may become entitled to or interested in lands, or the possession or enjoyment thereof, or the rents and profits thereof:

The word "power" shall extend to and include an authority, whether at the Common Law, or by Act of Parliament, or by way of use.

Short title.

II. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Title to Real Property Act, 1856."

Commencement of Act.

III. This Act shall come into operation, except where it is herein otherwise expressly provided, on the day of one thousand eight hundred and fifty-six.

Act not to apply to copyholds.

IV. This Act shall not, except where it is herein otherwise expressly provided, extend or apply to lands of copyhold tenure, or any copyhold estate, interest, or right therein; but nevertheless this Act shall extend and apply to such lands of copyhold tenure as from time to time may be enfranchised, or may cease to be demisable by copy of court roll from and after the enfranchisement thereof, or from and after the time of the same ceasing to be demisable as aforesaid.

Uses and certain other technical modes of creating estates dispensed with, and certain limitations now

V. After the commencement of this Act, all such estates, interests, rights, and powers, as now can only be limited or created or made to arise in or concerning lands in or by any deed, will, or other instrument, under or by the effect or operation of the statute concerning uses passed in the twenty-seventh year of King Henry the Eighth, chapter ten, or by will, as or by way of an executory devise

or executory bequest, or under any law or rule concerning executory devises or bequests, may, severally, if and when it shall be thought fit, be limited or created and made to arise as legal estates, interests, rights, and powers of or concerning the lands which may be the subject thereof, either by deed or will, without the employment or intervention of any form of use or executory devise or bequest, and without regard to any form of limitation or mode of creation which may now be requisite or proper at law for the effectual limitation of uses or the effectual creation of executory devises or bequests; and all and every clauses, limitations, forms, and provisions limiting or creating or purporting to limit or create any estates, interests, rights, or powers of the kinds or descriptions aforesaid, shall, whether in a deed or will, create or have the effect of creating the same rights, interests, and powers, at law as well as in equity, as the same would before the passing of this Act have created respectively, according to the nature thereof, if the same respectively had been limited or created or made to arise under the provisions of the said statute, or by way of use, or by way of executory devise or bequest, as the case may be; and all and every such estates, interests, rights, and powers shall, when so created, limited, or made to arise, be cognizable by the courts of law accordingly: provided always, that no person shall, by virtue of this Act, by any instrument to take effect in his lifetime, limit or create or cause to arise any such estate, interest, right, or power as aforesaid in or concerning any lands, unless such instrument shall be a deed, whether, for the limitation or creation of any such estate, interest, right, or power, according to its present nature or quality, a deed would or would not now be requisite.

only valid by will may be made also by deed.

VI. The provisions of the statute passed in the twenty-seventh year of King Henry the Eighth, chapter sixteen, shall be and the same are hereby repealed, save as to all estates, titles, rights, or powers which shall have been limited or created or made to arise, or expressed to be limited or created, as to any lands, before the commencement of this Act.

Statute of Enrolments repealed.

VII. No limitation of a use, or of an estate, interest, or power by way of use, or in the form or after the manner of a use, contained or appearing or purporting to be contained in any deed or instrument made either before or after the passing of this Act, nor any appointment in pursuance of any such power, shall be inoperative or fail of effect, or be deemed to be void or ineffectual at law, by reason or in consequence of there not being in, by, or under such deed or instrument any seisin to serve or feed such use or limitation or intended limitation, or by reason or in consequence of there being only a defective or insufficient or imperfect seisin; but every such limitation or intended limitation and use shall operate and take effect, and be deemed to have operated and taken effect, to the same extent and in the same manner, as to the lands forming the subject thereof, to all intents and purposes as the same would or might operate or take effect, or would or might have operated or taken effect, as to such lands, if there had been in, by, or under such deed or instrument such a seisin to serve or feed such limitation or intended limitation or use as is required in that behalf by the said statute of the twenty-seventh year of Henry the Eighth, chapter ten, or any rule or rules of the courts of law relating thereto or to uses; and all the provisions of the said last-mentioned statute to the contrary thereof shall be and are hereby repealed: provided always, that nothing in this clause contained shall disturb or affect the possession or enjoyment of any lands by any person who before the passing of this Act shall have become entitled to and shall have obtained the possession or enjoyment thereof by reason or in consequence of any such failure or invalidity at law as aforesaid of any such limitation, estate, interest, or power as in this clause mentioned, and by reason or in consequence of such limitation, estate, interest, or power not being supportable or enforceable in equity for want of a valuable consideration or otherwise.

Imperfect limitations of uses rendered valid at law in certain cases.

VIII. Every estate, interest, or limitation which before the passing of this Act shall have been or shall have been expressed to be limited, created, or made to take effect or arise, or which hereafter shall be or shall be expressed or intended to be limited, created, or made to take effect or arise in or of any lands, shall be and shall be deemed and taken to have been valid and effectual at law as well as in equity, and shall be and be deemed to have been cognizable

Certain rules of feudal origin in the limitation of estates abrogated.

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in courts of law as well as in courts of equity, notwithstanding the circumstance of any such estate, interest, or limitation being or having been an estate or interest or limitation of freehold created or limited or attempted to be created or limited by deed otherwise than by way of use, to commence or take effect at a future day, and without the intervention of a precedent or particular estate in the lands forming the subject of such estate, interest, or limitation, and also notwithstanding the circumstance of any such estate, interest, or limitation being or having been limited, created, or made to take effect or arise, or expressed or attempted to be limited, created, or made to arise, by deed as a remainder or by way of remainder out of or in a term of years or estate for years in lands after or expectant upon a precedent or particular or limited estate or interest out of or in such term or estate, and also notwithstanding the circumstance of any such estate, interest, or limitation being or having been limited, created, or made to arise or take effect, or expressed or attempted to be limited, created, or made to arise or take effect, by deed otherwise than by way of use upon or after or in derogation of a fee or an estate in fee or limitation of the fee of the lands forming the subject of such estate, interest, or limitation, and also notwithstanding the circumstance of any such estate, interest, or limitation being or having been limited or expressed or attempted to be limited by deed otherwise than by way of use to arise on a contingency or event which in case it should happen would operate to abridge or determine or derogate from a precedent estate or the particular estate in the lands forming the subject of such estate, interest, or limitation, and also notwithstanding the circumstance of any such estate, interest, or limitation being or having been limited or expressed or attempted to be limited to arise or take effect on an improbable contingency, or on a contingency the possibility or probability of which would or might before the passing of this Act have been considered not to be within legal expectation or legal contemplation, or not within legal possibility, but all and every such estates, interests, and limitations as in this clause mentioned shall in such respective cases as aforesaid take effect or be deemed to have taken effect or to have been capable of taking effect in the same manner and to the same extent as if no rule of law, or of the common law, or of tenure, had existed or had been deemed to exist by virtue whereof any such circumstances or circumstance as in this clause mentioned did or might or could in such respective cases as aforesaid prejudice or affect the validity at law of such respective estates, interests, or limitations, or attempted estates, interests, or limitations, or any of them: provided always, that nothing in this clause contained shall disturb or affect the possession or enjoyment of any land by any person who before the passing of this Act shall have become entitled to and shall have obtained the possession or enjoyment thereof by reason or in consequence of any such failure or invalidity at law as aforesaid of any such limitation, estate, interest, or power as in this clause mentioned, and by reason or in consequence of such limitation, estate, interest, or power not being supportable or enforceable in equity for want of a valuable consideration, or otherwise.

Remainders in certain cases rendered valid, notwithstanding defects in particular or preceding estates.

IX. No remainder, or limitation by way of remainder, nor future estate or limitation of or in lands, whether already or hereafter to be limited or created, which at the time of the commencement of this Act shall not have become actually void and incapable of taking effect by reason or in consequence of any rule of law or tenure relating to any of the matters or circumstances next herein-after mentioned, shall after the commencement of this Act become void or fail of taking effect, although arising under or contained or limited or intended to be limited in any instrument made before the passing of this Act, by reason or in consequence of such remainder, limitation, or estate being or becoming a contingent remainder of the freehold expectant on the determination of a term of years or a particular estate for years, or expectant only or merely on the determination of a term of years or particular estate for years, or by reason or or in consequence of there being an interval between the determination or appointed time of the determination of the precedent or particular estate and the commencement or taking effect or appointed time of the commencement or taking effect of such remainder, limitation, or estate, or by reason or in consequence of the precedent or particular estate determining or expiring before the happening of the contingency or of the event or the arrival of the time on or at which any such remainder, limitation, or estate was or is limited or made

to take effect, or by reason or in consequence of such remainder, limitation, or estate not being ready to vest at the time of the determination of the precedent or particular estate.

Rule against perpetuities not to be affected.

X. Provided always, that nothing herein contained shall in any manner or to any extent or in any respect whatsoever alter, prejudice, or affect the rule against perpetuities, or any rules respecting remoteness in point of time in limitations of lands.

Equitable owner in fee may convey the legal estate vested in his trustee.

XI. After the commencement of this Act, any person who by virtue of any express trust concerning lands, whether created before or after the passing of this Act, shall be entitled to or shall have full power over the entire equitable and beneficial interest in the fee simple of such lands or in such other estate therein as by the instrument creating such trust was vested in the trustee therein named, shall have full power to convey or dispose of the legal fee simple or the legal estate in fee simple of the same lands or other such estate as aforesaid in such lands or any part thereof, to such person or persons and in such manner as he or they shall think fit; and the concurrence of the trustee of such legal estate, or the person in whom such legal estate shall or may be for the time being vested, shall not be necessary in any such conveyance or disposition, but such conveyance or disposition shall, as to such lands or any part thereof and such legal estate, have the same operation and effect to all intents and purposes whatsoever as if such trustee or person had made and executed or concurred in making and executing the same, and the trust which previously may have effected such lands by virtue of such instrument as aforesaid, or which may have been attached to the legal estate so vested in such trustee or person as aforesaid, shall upon the execution of such conveyance or disposition be and become extinguished: provided always, that if in any such case any costs or expenses shall at the time of any such conveyance or disposition being made be due or payable to such trustee or person on account or in respect of the trust estate, which previously to such conveyance or disposition was vested in such trustee or person, or any act, matter, or thing arising out of or relating to the trust affecting the same, then and in every such case the person or persons making such conveyance or disposition shall be deemed to be liable to pay such costs and expenses, and shall, upon demand, pay the amount of such costs and expenses to such trustee or person (the same to be taxed by one of the Taxing Masters of the High Court of Chancery, upon an order to be obtained in a summary way by such trustee or person, or by the person or persons making such conveyance or disposition); and such taxed costs shall be recoverable in an action at law at the suit of such trustee or person to whom the same shall be due.

Such trustee to deliver up the deeds, on demand.

XII. In the case of any such conveyance or disposition being made as in the said last clause mentioned, the trustee or person whose estate shall so have been conveyed or disposed of as in the same clause mentioned shall forthwith, upon demand made thereof by the person making such conveyance or disposition, deliver to the same person, or to such other person as he shall direct, all and every the title deeds, muniments, and writings (if any) relating to or concerning the lands which or the legal estate wherein shall so have been conveyed or disposed of, or relating to or concerning the trust which previously to such conveyance or disposition affected the same lands or any of them: provided always, that if any costs or expenses as aforesaid shall be due or payable to the trustee or person whose estate shall so have been conveyed or disposed of as aforesaid, then he shall not be bound to deliver up the said deeds, muniments, and writings as aforesaid until such costs and expenses, or the taxed amount thereof, shall have been paid.

Not necessary to ascertain who is the trustee.

XIII. It shall not be necessary, for the purpose of making an effectual conveyance, under the eleventh section of this Act, to state or mention in such conveyance the name of the person in whom the legal estate proposed to be conveyed thereby is vested at the time of such conveyance, or would if such conveyance were not made be vested, or to ascertain or inquire who has such legal estate, or what has become thereof.

Constructive trustees.

XIV. The power given by the eleventh section of this Act may be exercised in the case as well of an implied or constructive trust as in the case of an express trust, whenever in any such case of an implied or constructive trust

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there shall be or shall have been an order of a court of equity declaring or giving effect to such trust, or an order which, under the provisions of the Trustee Act, 1850, is to be deemed to have the effect of creating or declaring a trust, or attaching a trust upon any person.

A preferable equity not to be gained by getting in the legal estate.

XV. In any case in which priority or protection might but for this Act have been given or allowed in equity to or obtained in equity by or for or in respect of any estate or interest in lands by reason or on the ground of such estate or interest being protected by or tacked to any legal or other estate or interest in such lands, or by reason or on the ground of any conveyance or assignment being made or obtained of such legal or other estate in trust for or for the benefit of or to the intent to protect the owner of any estate or interest in such lands, no such priority or protection shall after the commencement of this Act be so given or allowed to or obtained by or for or in respect of any estate or interest in lands, and full effect shall be given in every court of equity to this present provision, although the party claiming such priority or protection as aforesaid shall claim as a purchaser for valuable consideration and without notice; and after the commencement of this Act, priority in equity as between two or more equitable interests in other respects equal, in any lands, shall be given or allowed to or in respect of such one of the same interests as was first in point of time created, or first in point of time arose.

First mortgagee making a further advance or buying up a subsequent mortgage.

XVI. Provided always, that if any person who may have the legal estate of lands by way of mortgage or as a security for money shall, while having such mortgage or security, advance more money, or a further sum to the same person by whom such mortgage or security was made, upon the security of a further charge or mortgage of or security upon the same lands or any part thereof, then such further charge, mortgage, or security shall have the same priority in respect to the lands expressed to be comprised therein as such first mortgage or security, unless at the time of the said person advancing such further sum he shall have received a notice in writing of some mortgage, charge, security, or other dealing affecting such lands to or in favour of some other person; provided also, that if any person who has the legal estate of lands by way of mortgage, or as a security for money, shall advance to another person having a subsequent mortgage or security upon the same lands or any part thereof the amount due upon such subsequent mortgage or security, and shall take to himself, or to a trustee for him, a transfer of such subsequent mortgage or security, then, as to the lands expressed to be comprised in such subsequent mortgage or security, such subsequent mortgage or security shall have the same priority as such first mortgage or security, unless the said person at the time of his paying the amount due upon such subsequent mortgage or security shall have received a notice in writing of some mortgage, charge, security, or other dealing affecting such lands to or in favour of some other person prior in date to such subsequent mortgage or security.

The doctrine of notice.

XVII. The notice in writing required by the terms of the said sixteenth section shall be a notice signed by the person to whom or in whose favour the mortgage, charge, security, or other dealing mentioned in such notice shall be made or effected, or his agent, and a court of equity shall not give effect to or recognize any other notice; and the rules of equity in relation to notice shall not be held to apply to the cases in the said sixteenth section provided for, save in the form and to the extent by such section and this section allowed.

The exercise of powers.

XVIII. No power in relation to lands, or the creation of estates therein or charges thereon, shall be executed except by some instrument in writing which would be sufficient in law to pass the estate or interest, or create the charge intended to pass under or be created by the appointment, if the person executing the power were the actual owner of the lands being the subject of the power.

The same.

XIX. Where the grantor of a power shall have directed or authorized the same to be executed by an instrument not sufficient according to law to pass the estate by way of conveyance if the person executing the power were the actual owner, such power shall not on that account be void, but its execution shall be regulated and governed by the rule in the section lastly herein-before contained.

The exercise of powers.

XX. Where the grantor of a power shall have directed any formalities to be observed in the execution of the power in addition to or over and above those which would be sufficient in law to pass the estate if the donee of the power were the actual owner, the observance of such additional formalities shall not be necessary to a valid execution of the power.

The same.

XXI. Every instrument executed by the grantee or donee of a power conveying an estate or creating a charge which such grantee or donee would have no right or power to convey or create except by virtue of such power granted or given to him, shall be deemed a valid execution of such power, though such power be not recited, mentioned, or referred to in the said instrument, and though the subject matter of such power be not specifically or expressly mentioned in the said instrument.

The same.

XXII. Every instrument, except a will made in execution of a power, or in fact operating as an execution of a power, and although the power may be a power of revocation only, shall be deemed a grant or conveyance within the meaning and subject to the provisions of this Act, and also of any Act to be passed for the registration of the ownership of lands.

The same.

XXIII. No disposition by virtue of a power, or which might otherwise operate as an execution of a power, shall be void in law or in equity on the ground that it is more extensive than was authorized by the power, but every estate or instrument so created, so far as the same may be embraced by the terms of the power, shall be valid.

The same.

XXIV. The provisions herein-before contained with respect to powers shall extend and apply to any execution of a power which shall be made and any instrument which shall be executed after the commencement of this Act, whether the instrument by which the power was created was made before or after the passing of this Act.

Mortgages to be charges merely, at law as well as in equity.

XXV. When any conveyance, disposition, assurance, or charge of any lands or of any estate therein shall be made after the commencement of this Act as a security for money, or for the purpose or with the view of operating as a security for the payment of money or a debt, or the repayment of a loan or advance, then, whether the same shall be made by way of mortgage, or shall be made to a trustee for the purpose of selling the lands, or otherwise upon trust for securing the debt, loan, or advance, such conveyance, disposition, assurance, or charge shall not be deemed or taken, either at law or in equity, to transfer of itself any estate in the lands therein mentioned, nor to transfer of itself the ownership or any ownership, either qualified or otherwise, of or in the lands mentioned in such conveyance, disposition, assurance, or charge, nor shall the person to whom or in whose favour such conveyance, disposition, assurance, or charge shall be made, or any other person claiming under him as a mortgagee, or for his benefit, as a trustee or otherwise, be deemed, either at law or in equity, to be the owner or an owner, either qualified or otherwise, of such lands or any estate therein, nor shall the person making such conveyance, disposition, assurance, or charge be deemed by reason thereof, either at law or in equity, to have ceased to be owner of such lands or any part thereof, but, on the contrary, such conveyance, disposition, assurance, or charge shall, both at law and in equity, be construed and have effect only as a security for money, hypothecation, pledge, or charge of or on the lands mentioned therein, having incident thereto powers, but not any ownership or estate, otherwise than as herein-after mentioned, for enabling the lands pledged or charged to be made available for payment of the debt or repayment of the advance or loan for securing which such conveyance, disposition, assurance, or charge shall have been made.

Mortgages to have certain incidents.

XXVI. Every mortgage, security for money, hypothecation, pledge, or charge of or upon lands which shall be made or be effected or arise after the commencement of this Act shall, except where a contrary intention shall be stated in or shall appear from the instrument containing the same or under which the same shall arise, be deemed and taken to include or comprise, in addition to such covenants, agreements, powers, and authorities as shall be expressly contained therein, such covenants, agreements, powers, and authorities as are mentioned in Schedule A. to this Act annexed.

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XXVII. Mortgages, securities for money, hypothecations, pledges, or charges of or upon lands, may be according to the form in Schedule B. to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which may be thought fit.

Re-conveyance not necessary on satisfaction of a mortgage.

XXVIII. Upon payment, satisfaction, discharge, or extinguishment of the debt, loan, or advance to secure which any conveyance, disposition, or assurance by way of security for money, or any mortgage, pledge, hypothecation, or charge, shall be or before the passing of this Act shall have been made, and upon a memorandum or acknowledgment of such payment, satisfaction, discharge or extinguishment being endorsed or written upon or at the foot of or on some part of the instrument containing such security, mortgage, pledge, hypothecation, or charge, and signed by the person to whom or in whose favour or for whose benefit the same shall be or shall have been made, or his executors, administrators, or assigns, such security, mortgage, pledge, hypothecation, or charge, and all the rights, powers, and authorities incident thereto, or expressly given or created for the purposes thereof, and all right and interest under any such conveyance, disposition, assurance, or charge made by way of security for money as aforesaid, shall be deemed and taken to be and to have become absolutely extinguished, without any re-conveyance or release of the lands comprised therein, and thereafter no estate, charge, right, power, or authority shall remain or be deemed or taken to remain in the mortgagee or other person to whom or in whose favour or for whose benefit such security, mortgage, pledge, hypothecation, or charge shall be or shall have been made, or any trustee for him, in, to, over, or in respect of the lands mentioned or comprised in such security, mortgage, pledge, hypothecation, or charge, or any part thereof.

General power to trustees to give receipts.

XXIX. No person who shall actually and without fraud pay a sum of money to a trustee, which the trustee is not expressly by the terms of his trust disabled from receiving, shall be responsible for the proper application of such money according to the trust, nor shall any right or title which would be derived by him from such trustee in consideration or as the consequence of such payment if there were no misapplication of such money, or if there were an express authority by the terms of the trust for the trustee to receive the same, be impeached or called in question in consequence of any misapplication by the trustee of the money so paid.

Landowners enabled to discharge their property of pecuniary charges in certain cases by paying the money into the Court of Chancery.

XXX. It shall be lawful for any person entitled to or having an interest in lands subject to or affected by a pecuniary charge, or subject to or charged with the payment or provision of a sum of money, or subject to any other kind of liability, which, according to the nature or object thereof, can or may be satisfied by payment or provision of a sum of money, when there shall be reasonable cause in that behalf to satisfy such charge, and pay and discharge such sum of money, and discharge such liability, and to exonerate such lands from such charge, sum of money, or liability, by paying, and he shall accordingly be at liberty and is hereby authorized to pay, the amount of the charge, or the amount charged upon the said lands, or to which the same are liable, in any such case as before mentioned, into the Bank of England, to the credit of the Accountant General of the Court of Chancery, to be placed to his account there to the credit of the parties interested in such charge or sum of money (describing them, so far as the person acting upon this present power can do), subject to the control and disposition of the said court; and upon such payment or deposit of money as last aforesaid being made, the cashier of the bank shall give to the party paying in such money a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what lands (mentioning them shortly) the same shall have been paid in, and thereupon all the lands so charged or subject or liable or affected as before mentioned shall be or become absolutely freed, exonerated, and discharged of and from the charge, sum of money, or liability in discharge or satisfaction whereof such money shall have been paid or deposited as aforesaid, and, as against all parties entitled to or interested in such charge, sum of money, or liability, the person so acting upon this present power as aforesaid shall be entitled to the said lands, in the same manner as if such charge or liability had never existed, or such sum of money had never been payable thereout or charged thereon: provided always, that this section shall not apply to money charged on land by way of mortgage.

XXXI. Upon the application by petition of any party making claim to the money so paid or deposited as last aforesaid, or any part thereof, or to the charge in respect whereof the same shall have been so paid or deposited, or any part of such charge, or any interest in the same, the said Court of Chancery in England may in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective rights, titles, or interests of the parties making claim to such money or charge or any part thereof, and may make such other order in the premises as to such court shall seem fit. Payment of the money out of court to the persons entitled.

XXXII. In all cases of monies deposited in the bank under the provisions of the said thirtieth section, except where such monies shall have been so deposited without reasonable cause in that behalf, the costs of the investment of such monies in the public funds, and the costs of obtaining the proper order for such purpose, and the costs of the orders for the payment of the dividends and interest of the public funds in which such monies shall be invested, and for the payment out of court of the principal of such monies or funds, and of all proceedings relating thereto, shall be ordered to be paid either out of such monies or funds, or by the parties interested in or making claim to such monies or funds, or the dividends or interest thereof, in such manner as the Court of Chancery shall from time to time in that behalf think fit. Costs of applications.

XXXIII. The power in the said thirtieth section of this Act contained shall or may be exercised in manner aforesaid, whether the charge so thereby authorized to be satisfied as aforesaid be present or immediate, future or reversionary, certain or contingent, and where the same shall be a future or reversionary or contingent charge the interest or dividends of the money so paid or deposited, or of the funds upon which the same may be invested, shall, if there be no interest accruing in the meantime upon or in respect of such charge, be paid to the person paying or depositing such money as aforesaid, until the time when such charge would, if there had been no such payment or deposit as aforesaid, have become vested and payable in possession, or the time when interest would or might have accrued or become payable thereon to or in favour of the person entitled to or interested in such charge. Reversionary and contingent charges.

XXXIV. It shall be lawful for any person who, under any settlement of any lands, or any deed, will, or instrument under or by virtue of which any lands shall stand limited to or in trust for any person by way of succession, shall be entitled to the possession or to the receipt of the rents and profits of any such lands for an estate for life or for any greater estate, either in his own right or in right of his wife, and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy or in dower or in right of a wife who is seised in fee, to demise the same or any part thereof from time to time for any term not exceeding twenty-one years in possession, unless the settlement, deed, will, or instrument shall contain an express declaration that it shall not be lawful for any such person to make such demise; provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a condition of re-entry on nonpayment within a time not less than twenty-eight days of the rent thereby reserved, and on non-observance of the covenants or conditions therein contained, and provided a counterpart of every deed of lease be made and executed by the lessee, of the execution of which counterpart a reference thereto in the lease shall be sufficient evidence; but nevertheless this power shall not be exercised in the case of any lands subject to a settlement or instrument limiting interest in succession, wherein such settlement or instrument there shall be expressly stated an intention that this power shall not be given or allowed, or shall not be exercised as to the lands comprised therein. General power to lease settled lands.

XXXV. Every demise authorized by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settle- The same.

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ment, deed, will, or instrument, if the estates be settled, and in the case of unsettled estates, against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

General power to sell and exchange settled lands.

XXXVI. Every settlement of lands which shall be made after the commencement of this Act, and every deed, will, or other instrument which shall be made after the commencement of this Act, under or by virtue of which any lands shall stand limited to or in trust for any persons by way of succession, shall be deemed and taken to imply and to contain by implication (where a contrary intention shall not be expressly stated in such settlement, deed, will, or instrument), and in addition to the powers and provisions which may be expressed therein, a declaration or provision that it shall be lawful for the persons who shall be therein named trustees, and the survivors and survivor of them, and the executors or administrators of such survivor, or the trustees or trustee who from time to time may be appointed in the said trustees room, during the life of the first tenant for life under such settlement, deed, will, or instrument, with his consent in writing, and after his decease, and during the life of the next tenant for life, with his consent in writing, and after the decease of the survivor of the tenants for life, from time to time and at all times during the minority or respective minorities of any child or children who by virtue of any of the limitations in the settlement, deed, instrument, or will shall be entitled to any estate of freehold or inheritance in possession of and in all or any part or parts of the lands, at the discretion and of the proper authority of them or him the said trustee or trustees for the time being, to dispose of and convey, either by way of absolute sale or in exchange for or in lieu of other lands to be situate somewhere in England or Wales, all or any part or parts of the said lands, and the inheritance thereof in fee simple, to any person or persons whomsoever, for such price or prices in money, or for such equivalent or recompence in lands, as to them or him the said trustees or trustee for the time being shall seem reasonable, and also to sell or dispose of any part or parts, parcel or parcels, slip or slips of the said lands and hereditaments to any railway or other public company authorized to purchase or take lands for the purposes of their undertaking; and for the purpose of effecting such sales, dispositions, exchanges, or conveyances (but not for any other purpose), it shall be lawful for the said trustees or trustee for the time being, with such consent as aforesaid, or of their or his own discretion or authority, as aforesaid, (as the case may be,) by any deed or deeds, instrument or instruments in writing, duly sealed and delivered by them or him, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisions in the settlement, deed, will, or instrument declared and expressed of and concerning the lands so proposed to be sold or conveyed in exchange as aforesaid, and by the same or any other deed or deeds, instrument or instruments in writing, sealed and delivered in like manner, to limit, declare, direct, or appoint any use or uses, trust or trusts, interest or interests, estate or estates of the said hereditaments and premises, or any part or parts thereof, the uses of which shall be so revoked, which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate such sales, dispositions, exchanges, and conveyances as aforesaid; and also that upon any such exchange as aforesaid it shall be lawful for the said trustees or trustee for the time being to give or receive any sum or sums of money by way of equality of exchange or partition; and also that upon payment of the money to arise by sale of the said lands or any part thereof, or so to be received for equality of exchange, it shall be lawful for the said trustees or trustee for the time being to give and sign receipts for the money for which the same shall be sold, or so to be received by them or him for equality of exchange as aforesaid, and that such receipts shall be sufficient discharges to the person or persons paying the same respectively for the money for which the same shall be so given, or for so much thereof as in such receipts shall be respectively acknowledged to be received, and that the person or persons paying the same respectively, and taking such receipt or receipts for the same respectively as aforesaid, shall not afterwards be answerable or accountable for the loss, misapplication, or nonapplication, or be in anywise obliged to see to the application thereof or any part thereof respectively; and a declaration, that when all or any part of the lands shall be sold for a valuable consideration in money, or any money shall be received for equality of exchange, under the said powers, the said trustees or trustee for

the time being do and shall with all convenient speed either apply such monies in or towards satisfaction and discharge of any charges or incumbrances which may then affect the said lands or any of them, or any lands which may at any time be allotted or awarded under the powers of any inclosure or other Act of Parliament in lieu or in respect of any of the said lands, or do and shall lay out and invest the money to arise by such sale or sales or to be received for equality of exchange in the purchase of other lands, to be situate somewhere in England or Wales, held for a clear indefeasible estate of inheritance in fee simple in possession, or of lands of a leasehold or copyhold tenure, convenient to be held therewith or with the lands settled or so to be purchased or received in exchange as aforesaid, yet so that during the life of any tenant for life in possession for the time being such purchase or purchases respectively be made with his consent, testified by some writing under his hand, and after the decease of the surviving tenant for life then with the consent in writing of the person or persons who under and by virtue of the limitations contained in the settlement, deed, will, or instrument would be for the time being in the actual possession of or entitled to the receipt of the rents and profits of the lands to be purchased as before mentioned, in case the same were then actually purchased, if such persons or person be of full age, but if such person or persons shall be under age, then at the discretion and of the proper authority of the said trustees or trustee for the time being; and moreover, that the said trustees or trustee do and shall settle and assure, or cause to be settled and assured, as well the lands so to be purchased as the lands to be received by way of exchange, to such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations as are in and by the settlement, deed, will, or instrument expressed and declared of and concerning such of the lands therein mentioned as shall be sold or exchanged, or as near thereto as the death of parties and other intervening accidents will then permit, yet so that if any of the lands so to be purchased shall be held by lease or leases for years the same shall not vest absolutely in any child or children who by virtue of the limitations may become tenant or tenants in tail of the lands settled, and who shall not attain the age of twenty-one years; and a declaration that if any of the lands so to be purchased as aforesaid shall be held by lease or leases for lives or for years proper provisions shall be inserted in the settlements so to be made thereof as aforesaid for renewing the same from time to time as occasion shall require, and that the fines, fees, and expenses of any such renewals shall from time to time be defrayed with and out of the rents, issues, and profits of the premises so to be purchased, and of which such renewals are to be made respectively; and a declaration, that until the money to arise by any sale or sales of the lands so made saleable or to be received for equality of exchange as before expressed shall be disposed of in the manner before mentioned, it shall be lawful for the said trustees or trustee for the time being, with such consent as last before is mentioned, or at their or his discretion, as the case may be, to lay out and invest the said sum or sums of money in their or his names or name in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, and to alter, vary, and transpose the said stocks, funds, and securities for or into other stocks, funds, and securities of the like nature, as occasion may require; and a declaration, that the dividends, interest, and annual produce arising from the said stocks, funds, and securities shall be paid and applied to the person or persons and in the manner and to and for the intents and purposes to or for which the rents, issues, and profits of the said lands to be purchased therewith would be payable or applicable in case such purchase or purchases and settlement thereof as aforesaid were then actually made.

General power to sell and exchange settled lands.

XXXVII. Where it shall happen that there are more than one set of trustees named in any such settlement, deed, will, or instrument, and where it shall not be therein stated or expressed which set of trustees may exercise the powers herein-before given or attached by implication as to the lands comprised in such settlement, deed, will, or instrument, then such powers as aforesaid shall be exercisable and may be exercised by the trustees or set of trustees who shall be first named in the order of the parties at the commencement or in the exordium of such settlement, deed, will, or instrument.

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General power to sell and exchange settled lands.

XXXVIII. The rules of law and equity which now affect the execution of any such powers as last herein-before mentioned, in cases where such powers are expressly inserted in any such settement, deed, will, or instrument as aforesaid, shall be deemed and taken to be applicable according to the circumstances of each case to the execution of the powers herein-before given and attached by implication as aforesaid.

Judgments not to bind lands in the hands of purchasers, except in certain cases.

XXXIX. No judgment which shall after the commencement of this Act be entered up or recovered for a sum of money against any person in any of Her Majesty's Courts of Record or other courts, and no decree or order for payment of money having the effect of such a judgment made upon or against any person after the commencement of this Act, shall have the effect of creating a general charge or lien upon all the lands of such person, or any other charge or lien upon any lands of such person than such as is not excluded by the provisions herein-after contained, that is to say, no such judgment, decree, or order shall bind, charge, or affect any lands of such person, after such lands shall have been conveyed or parted with by such person to or in favour of or to any trustee for a purchaser for valuable consideration and without fraud, unless, prior to the execution of such conveyance, process of execution or sequestration shall have issued upon such judgment, decree, or order against or in respect of the lands mentioned or comprised in such conveyance, or unless the judgment creditor or other the person entitled to enforce or interested in such judgment, decree, or order shall prior to the execution of such conveyance have registered, in respect of such judgment, decree, or order, in addition to the particulars required to be registered by the statutes of the second and third Victoria, chapter eleven, and eighteen and nineteen Victoria, chapter fifteen, a particular or description of or rereference to the lands mentioned or comprised in such conveyance as being the lands or part of the lands intended to be affected by such judgment, decree, or order; and if at the time of such conveyance being made no such process of execution or sequestration shall have issued, and no such particular of or reference to such lands shall have been registered as aforesaid, then from and after the execution of such conveyance the lands comprised therein, or such of them as to which such particular or reference as aforesaid shall not have been registered, and the purchaser, shall be wholly freed and discharged from such judgment, decree, or order, and all lien, charge, claim, or demand by virtue or in consequence of the same; and all rules of law and provisions of statutes to the contrary of this provision shall be and the same are hereby abrogated and repealed: provided always, that mortgagees shall not be deemed purchasers within the meaning of this clause.

The same.

XL. After the commencement of the registration of ownership under any Act to be passed for the registration of the ownership of lands, the Acts, matters, and things, which by the last clause are to be done or to take place before the execution of the conveyance to the purchaser, in order to give effect to any judgment, decree, or order, as against any purchaser, shall be done or take place before he shall be registered under any such Act as owner of the lands in question, and not before the execution of the conveyance to him, and the provisions in the last clause contained with reference to the execution of the conveyance shall after such commencement of registration apply and have reference in each case to the registration of the ownership of the purchaser under any such Act.

Power for one to assign to himself and another.

XLI. After the passing of this Act, it shall be lawful for any person seised or possessed of or entitled to any real or personal property, at law or in equity, or having any interest therein, legal or equitable, to convey or assign or otherwise assure such property or any part thereof, or his interest therein, or any part thereof, to himself jointly with any other person or persons; and it shall not be necessary, for the purpose of any such conveyance, assignment, or assurance, or for the purpose of vesting such property or interest in such person jointly with any other person or persons, to limit any use or execute any re-assignment, or resort to any other device, but the conveyance, assignment, or assurance by any such person to himself and another or others shall be operative to vest directly in him jointly with such other or others the property or interest mentioned in such conveyance, assignment, or assurance, or such property or interest as might or would have passed thereby or become

vested thereunder if such person had not himself been named as one of the persons to whom or in whose favour such conveyance, assignment, or assurance is made. *Mr. Lewis.*

XLII. After the commencement of this Act, the right to sue upon any bond, covenant, or other specialty, and to recover any debt, sum of money, or damages, by virtue of any bond, covenant, or other specialty, and the right of bringing or instituting any action or suit for or in respect of any chose in action, or upon or in respect of any contract, and all interest in any such action or suit, and all property and interest in any such bond, covenant, or specialty, or in any such debt, sum of money, or damages, or in any such chose in action or contract, may be assigned and transferred, at law as well as in equity; and in every case in which any such assignment or transfer would in equity before the passing of this Act have been effectual against the person executing or making the same, such assignment or transfer shall be equally and in like manner and to the like extent effectual as to all and every the matters aforesaid, and for all and every the purposes aforesaid, at law as well as in equity. provided always, that every such assignment or transfer, in order to take effect at law under this Act, shall be made by deed; provided also, that nothing in this clause contained shall alter, derogate from, prejudice, or affect any rule or doctrine of the courts of equity, or any provision of the bankrupt laws or rule in bankruptcy, as to the notice requisite to perfect assignments of choses in action, or to take them out of the order and disposition of the bankrupt, nor any rule or doctrine of the courts of equity as to voluntary or gratuitous assignments of choses in action, or any notice or other form, ceremony, or act to be observed, done, or performed for perfecting a voluntary or gratuitous assignment of a chose in action; provided also, that nothing herein contained shall alter or affect the laws for the prevention of maintenance and champerty, or any statute or rule of law or equity touching maintenance or champerty. Power to assign choses in action at law.

The SCHEDULES in the foregoing Act referred to.

Schedule (A.)

A proviso that if the person making the charge, his heirs, appointees, executors, administrators, or assigns, or any other person for the time being interested in the premises, do, on or before the day to be therein named for the purpose, pay unto the person in whose favour the charge is made, his executors, administrators, or assigns, the sum intended to be secured, and interest for the same after the rate per centum per annum to be therein specified, by equal half-yearly or quarterly payments in the year, without any deduction or abatement out of the same, then and in such case the charge shall cease; and a covenant by the person making the charge, or such person or persons as shall be therein named for this purpose, for himself, his heirs, executors, administrators, and assigns, or for themselves, their heirs, executors, administrators, and assigns, with the person to whom the charge shall be made, his executors and administrators, that the covenantor or covenantors, his or their heirs, executors, and administrators, will pay unto the person to whom the charge shall be made, his executors, administrators, and assigns, the sum secured, with such interest for the same as aforesaid, and every part thereof respectively, in the manner and on or at the days or times before mentioned or appointed for payment thereof respectively, according to the purport of the aforesaid proviso, and the true intent and meaning of the charge, and in case the principal sum or any part thereof shall not be paid at such period, then will thenceforth (but without prejudice, nevertheless, to the covenant for payment of the principal sum at the said period,) pay unto the person to whom the charge shall be made, his executors, administrators, and assigns, interest for the same, or for so much thereof as shall then and from time to time remain unpaid, after the rate aforesaid, by equal half-yearly or quarterly payments, on the days to be therein specified, until the whole of the said principal sum be discharged, and also a proportionate part of such interest for any period less than the half of a year which shall have elapsed at the time of payment of the principal sum or any part or parts thereof, such proportionate part thereof to be paid at the time of payment of the principal money for which the same shall be due, and will make all the said payments without any deduction or abatement whatsoever; and further, that, notwithstanding any act, deed, matter, or thing whatsoever by the covenantor or any person or persons whomsoever had made, done, committed, or executed, or willingly or knowingly permitted or suffered, to the contrary, (except as may appear in the charge,) he the said covenantor has in himself good right and full power to assure and charge the lands therein assured or charged, or intended so to be, in manner expressed in the charge,

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and according to the true intent and meaning thereof; and further, (in the case of leasehold premises,) that the rents, costs, and agreements respectively reserved and continued by and in the lease under which the same may be held, and which on the lessee's or assignee's part ought to have been paid, observed, and performed respectively, have been respectively duly paid, observed, and performed up to the day of the date of the charge; and further, that it shall be lawful for the person to whom the charge is made, his heirs, executors, administrators, and assigns, from time to time and at all times from and after default shall happen to be made in payment of the principal sum intended to be secured, or the interest thereof, or any part thereof respectively, peaceably and quietly to enter into and upon, have, hold, use, occupy, possess, and enjoy, all and singular the lands intended to be charged, with their appurtenances, and to receive and take the rents, issues, and profits thereof to and for his and their own use and benefit, and to procure himself or themselves to be registered or entered as registered owner or owners of such lands, without any lawful let, suit, trouble, denial, eviction, ejection, molestation, disturbance, or interruption whatsoever of, from, or by him the covenantor, his heirs, executors, administrators, or assigns, or of or by any other person or persons whomsoever, but nevertheless, as to premises which may be comprised in any previous charge, or security mentioned in such charge, excepting the person or persons rightfully and properly claiming by virtue of such securities or charges respectively during the subsistence of the same securities or charges respectively, and that free and clear and freely and clearly acquitted, exonerated, and discharged or otherwise by the covenantor, his heirs, executors, or administrators, well and sufficiently served, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other estates, rights, titles, charges, and incumbrances whatsoever had, made, created, committed, or suffered by the covenantor or any other person or persons whomsoever (except as appears by the charge); and moreover, that the covenantor and his heirs, and all and every persons and person having or rightfully claiming, or who shall or may have or rightfully claim, any estate, right, or interest whatsoever, at law or in equity, of, in, to, or out of the said lands or any part thereof, with their appurtenances, (except in the case of leasehold premises any person or persons rightfully and properly claiming under or in respect of the rents, covenants, and agreements respectively reserved and contained in the lease under which the same may be held, and except in the case of premises comprised in any previous charge or security mentioned in such charge the person or persons rightfully or properly claiming under or in respect of the said previous charge or security,) will from time to time and at all times upon every reasonable request of the person to whom the charge shall be made, his heirs, executors, administrators, or assigns, but at the costs and charges of the covenantor, his heirs, appointees, executors, administrators, or assigns, in the meantime until the lands respectively shall be absolutely sold and disposed of under the power for that purpose, and after such absolute sale thereof respectively then at the request, costs, and charges of the purchaser or purchasers thereof respectively, his, her, or their heirs or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every or any such further and other lawful and reasonable acts, deeds, things, grants, bargains, sales, appointments, releases, conveyances, surrenders, instruments, and assurances in the law whatsoever, for further, better, more perfectly, absolutely, and effectually appointing, granting, releasing, conveying, surrendering, and assuring the lands, with their appurtenances, unto and to the use of the person to whom the charge shall be made, his heirs and assigns for ever, according to the true intent and meaning of the charge, or unto and to the use of the purchaser or purchasers thereof respectively, his, her, or their heirs and assigns for ever, freed and discharged from all equity of redemption, or otherwise howsoever, as by the person or persons requiring such further assurance or assurances, or his, her, or their counsel in the law, shall or may be advised or required; and a proviso, that in the meantime until default shall be made in payment of the principal sum intended to be secured, or the interest thereof, or any part thereof respectively, contrary to the effect of the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of the charge, it shall be lawful for the said covenantor or for the person making the charge, his heirs, appointees, executors, administrators, or assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said lands, with their appurtenances, and to receive and take the rents, issues, and profits thereof to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, eviction, ejection, molestation, disturbance, or interruption whatsoever of, from, or by the person to whom the charge shall be made, his heirs, executors, administrators, or assigns, or any person or persons rightfully claiming or to claim by, from, through, under, or in trust for him, them, or any of them, but subject nevertheless to the previous charge or security (if any) subject to which the lands shall be expressed or intended to be charged; and a proviso, that if the interest of the principal sum intended to be secured, or any part thereof, shall at any time be in arrear or unpaid for the space of three calendar months next after any of the times appointed or mentioned for payment thereof, or if default shall be made in payment of the principal sum or any part thereof for the space of six calendar months next after the time apointed or mentioned for the payment thereof, then and in either of the said cases it shall be lawful for the person to whom the charge is made, his executors, administrators, and assigns, without any further or other authority, privity, or concurrence of or from the said person making the charge, his heirs, executors,

administrators, or assigns, and notwithstanding he or they may dissent therefrom, and notwithstanding any acceptance of any part of the said principal sum or of any interest for the same, or any part thereof, after default made in payment of the said principal sum or interest as aforesaid, to make sale and absolutely dispose of the lands or any part or parts thereof, with their appurtenances, and the fee simple and inheritance thereof, and the registered ownership of the same, or, in the case of leasehold premises, the term or terms thereof or therein respectively, and the registered ownership of such leasehold premises, (subject as to the said leasehold premises to the rents, covenants, and agreements contained in the lease,) unto any person or persons, either by public auction or private contract, and either together or in parcels, for such price or prices in money, and subject to such conditions of sale and other stipulations as to the title and otherwise, as the person to whom the charge is made, or his executors, administrators, or assigns, may deem expedient, and in particular on any sale in lots to make or impose any such conditions or stipulations, although the same may not be required by the state of the title, to all such lots, and with full power, liberty, and authority also for him or them from time to time to purchase in the same lands or any part thereof at any such sale by public auction, and to rescind or abandon or vary the terms of any sale or agreement for the sale thereof either by public auction or private contract, and to resell the hereditaments, lot or lots, which shall be so bought in, or the contract or contracts for the sale thereof shall be so rescinded or abandoned, at any future auction or by private contract in manner aforesaid, without being liable for any loss which shall or may be incurred or occasioned thereby respectively, and to make, do, give, enter into, and execute all such acts, deeds, contracts, conveyances, instruments, and assurances as shall or may be deemed to be necessary or proper for or towards carrying any and every such sale or sales into effect, and conveying, surrendering, and assuring the said hereditaments and premises, or such part or parts thereof as shall be sold, and the registered ownership of the same, to the purchaser or purchasers thereof respectively, his, her, or their heirs and assigns, or as he, she, or they shall direct or appoint; and a declaration that the person to whom the charge is made, his executors, administrators, and assigns, shall stand possessed of and interested in the monies to arise from and be produced by any and every such sale or sales as aforesaid, and of and in the rents and profits of the said hereditaments and premises which shall be received by him or them before the completion of any such sale as aforesaid, upon the trusts following; (that is to say,) in trust that he or they do and shall thereout in the first place pay, satisfy, and discharge all such costs, charges, and expenses as he or they shall sustain or incur in or about carrying any and every such sale or sales as aforesaid into effect, or in completing the title to the said hereditaments and premises, and (if the same shall be incurred) the costs, charges, and expenses of or relating to any sale by auction at which any of the said hereditaments shall be bought in, and of or relating to the enforcing the performance of any contract for sale, or otherwise in execution of the authorities conferred by the charge or in relation thereto respectively; and do and shall, in the next place, out of such monies, rents, and profits, retain to and reimburse himself and themselves the principal sum intended to be secured, or so much thereof as shall be then due and payable, and all interest which shall be then due and payable in respect thereof, together also with all such sum and sums of money as shall or may be due or payable to the person to whom the charge shall be made, his executors, administrators, or assigns, for or in respect of insuring or keeping insured any messuages or tenements and buildings forming part of the property charged from loss or damage by fire, and interest in respect of such sum or sums paid or advanced for insurance after the rate of four pounds per centum per annum from the time or respective times of the same being paid or advanced by the person to whom the charge is made, his heirs, executors, administrators, or assigns; and, after answering and satisfying the purposes aforesaid, do and shall pay the residue or surplus (if any) of the said monies, rents, and profits unto the person making the charge, or his heirs, executors, administrators, or assigns, according to their several and respective rights and interests in the equity of redemption of the lands charged; and in case any part of the said lands shall remain unsold, after answering the purposes aforesaid, then that the person to whom the charge is made, his heirs or assigns, do and shall, at the request, costs, and charges of the person making the charge, his heirs, appointees, executors, administrators, or assigns, grant and convey the same and the registered ownership thereof respectively unto and to the use of the person making the charge, his heirs and assigns, or as he or they shall direct or appoint; and a declaration, that for facilitating the sale of the said lands all and every the acts, deeds, contracts, conveyances, instruments, and assurances which shall be made, entered into, and executed by virtue of or pursuant to the aforesaid powers or provisions, or any of them, in, for, and about the sale, conveyance, and assurance of the said lands or any part or parts thereof, to any such purchaser or purchasers as aforesaid, shall be good, valid, and effectual, at law and in equity, to all intents and purposes whatsoever, without any further or other assent, privity, or concurrence of or from the person making the charge, his heirs, appointees, executors, administrators, or assigns, or any person or persons whomsoever claiming or to claim by, from, through, or under him or them, and that the receipt or receipts in writing of the person to whom the charge shall be made, his executors, administrators, or assigns, shall be a good and effectual discharge and good and effectual discharges for all purchase monies, rents, and profits, and other monies whatsoever, paid to him or them under

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or by virtue of the charge or the aforesaid powers or any of them, and that the person or persons paying such monies, and taking such receipt or receipts for the same, shall not afterwards be obliged or concerned to see to the application thereof nor shall be answerable or accountable for any loss, misapplication or nonapplication thereof or of any part thereof, nor be obliged or required to see into or ascertain the expediency or necessity of any sale or sales to be made of the said premises as aforesaid, or whether any such default shall or shall not have been made in payment of the said principal sum or interest as aforesaid, and that no purchaser shall be affected by reason of any sale to him having been made under any special or other conditions which the state of the title to the hereditaments purchased by him shall not have required; and a proviso, that the said power of sale shall not nor shall anything in the charge contained restrain or prevent the person to whom the charge is made, his executors, administrators, or assigns, from obtaining or compelling payment of the principal sum or the interest thereof or any part thereof respectively by process in law or in equity or otherwise, or from foreclosing the equity of redemption of the said mortgaged hereditaments and premises or any of them, in case default shall be made in payment of the said sum or interest or any part thereof at the times and in manner in the charge expressed, nor, on the other hand, shall the circumstance of the person to whom the charge is made, his executors, administrators, or assigns, resorting to or commencing any proceedings with a view to the foreclosure of the said lands or any of them, or to compelling payment of the said principal sum or interest or any part thereof, preclude him or them from afterwards exercising the said power of sale, when and as he or they shall think fit, as to such of the said premises the equity of redemption whereof shall not have been actually or finally foreclosed; and a proviso, that the said power of sale shall not be exercised unless three calendar months previous notice in writing shall have been given to or left at the then usual or last known place of abode or business in England of the person making the charge, or his executors or administrators, requiring payment of the principal money and interest for the time being due on the charge, (which notice to the said person making the charge, his executors or administrators, shall be effectual, notwithstanding any previous alienation, disposition, settlement, or assignment by the said person making the charge, or his heirs or assigns, of the equity of redemption or registered ownership of the said premises, and notwithstanding any disability of any person to or for whom the same notice shall be given or left as aforesaid, and though the name or names of the person or persons to or for whom the same shall be given or left shall not be stated therein,) and unless default shall be made in payment of the principal money and interest so for the time being due at the expiration of the said three calendar months, but nevertheless that only the person to whom the charge is made, or the person or persons respectively causing any such sale to be made contrary to such proviso, shall be answerable for his or their respective own act, neglect, or default, and that no purchaser under the said power shall be bound to inquire whether any such notice was given or left as aforesaid, nor be prejudiced or affected by any omission to give or leave such notice, or by any notice, express or implied, of such omission, or be bound to inquire whether default was made in payment of the said principal money and interest or either of them, or any part thereof, at the expiration of such three calendar months, but that, on the contrary, the production of the instrument creating the charge, without any memorandum or receipt endorsed thereon acknowledging payment of the whole of the principal money and interest thereby secured, shall be conclusive evidence as to the right of the person to whom the charge is made, or his executors, administrators, or assigns, to exercise the said power of sale, and to receive the purchase money arising therefrom; and a proviso, that the said power of sale, and the power of giving receipts, and all other powers incident thereto, may from time to time be exercised by the person or persons to whom the principal sum and interest, or so much thereof as shall be for the time being due and owing, shall be so for the time being due and payable, and that every or any person who shall or may have become seised of or entitled to the hereditaments so empowered to be sold as aforesaid, or the registered ownership thereof, by, from, through, or under the person to whom the charge is made, or his heirs or assigns, by conveyance, devise, descent, entry on the register, or otherwise, shall make and execute all such conveyances and assurances and grants of the registered ownership as shall be necessary or proper for or towards carrying any and every such sale or sales into effect; and a proviso, that it shall be lawful for the person to whom the charge is made, his executors, administrators, or assigns, in the execution of the said power of sale, to sell the lands or any part or parts thereof, subject to or discharged from the charges or securities (if any) subject to which the charge is expressed to be made, or any of them, and in case the same lands or any part thereof shall be sold discharged from the said charges or securities or any of them, then to apply a competent part or parts of the money to arise from the sale or sales of the same lands in or towards payment and satisfaction of the charges or securities, charge or security, from which the said lands shall be sold discharged; and further, a declaration that the person to whom the charge is made, his executors, administrators, and assigns, shall at all times have full discretionary power and authority to take such measures and make such arrangements in relation to the said charges or sections or any of them, either by paying off the same, and taking transfers and assurances thereof, or otherwise, as shall be by him or them deemed necessary, expedient, or convenient, for strengthening or confirming the security made by the charge or facilitating the execution of the said power of sale, and also to pay and defray all the costs, charges, and expenses incident to such measures or arrangements out of the

monies which shall from time to time come to his or their hands by virtue of the charge or the said power of sale or any exercise thereof; and further, a covenant by the person making the charge, or such person as shall be therein named for this purpose, for himself, his heirs, executors, and administrators, with the person in whose favour the charge is made, his executors, administrators, and assigns, that the covenantor, his executors or administrators, will at all times during the continuance of the security insure and keep insured the messuages or tenements and buildings thereby charged in a sum equal to the value thereof against loss or damage by fire in some respectable public insurance office or offices in London or Westminster, and will from time to time and at all times during the continuance of the security, pay and discharge or cause to be paid and discharged the annual and other premiums and sums of money which shall become due or payable upon or by virtue of such insurance, in order and to the intent that the said messuages or tenements and buildings may be kept and preserved insured from loss or damage by fire to the amount of the value thereof, and also that the said covenantor, his executors or administrators, will, from time to time, at the request of the person to whom the charge is made, his executors, administrators, or assigns, produce and show to him or them the vouchers or receipts of and for the premiums and sums so to be paid, in order that he or they may be satisfied that the said premises are so insured and kept insured as aforesaid; and a proviso, that if the said covenantor, his executors or administrators, shall, at any time or times hereafter during the continuance of the security, refuse or neglect to pay or cause to be paid the anuual premiums or sums of money payable in respect of such insurance as aforesaid, or to produce such receipts or vouchers when thereto required (which shall be deemed and considered as an implied admission of such nonpayment), then and in every such case it shall be lawful for (but not imperative on) the person to whom the charge is made, his executors, administrators, or assigns, from time to time, during so long as any money shall be due upon the security of the charge, to insure the mortgaged buildings in his or their name or names from loss or damage by fire in any office or offices of insurance, in or for any sum or sums of money not exceeding in the whole the sum secured by the charge, and from time to time to pay the annual premium or premiums and sum or sums of money which shall become due or payable upon or by virtue of such insurance; and a declaration that all sums of money which shall be recoverable on any such insurance as aforesaid shall (at the option of the person to whom the charge is made, his executors, administrators, or assigns,) forthwith be laid out and expended in rebuilding or repairing the premises injured by fire, in order the better to secure the due payment of the principal sum and interest secured by the charge, or be applied in or towards the payment or discharge of the money then due and payable upon or by virtue of the charge; and a further declaration, that all and every the sum and sums of money which shall be so paid by the person to whom the charge is made, his executors, administrators, or assigns, for or on account of any such insurance as aforesaid, shall, together with interest for the same after the rate of five pounds per centum per annum from the day or respective days on which the same shall be so paid or advanced as aforesaid, be and become a lien or charge upon the hereditaments and premises comprised in the charge, with their appurtenances, which shall not nor shall any part thereof be redeemed or redeemable, either at law or in equity, until payment as well of such sums and sum of money as last mentioned, with such interest for the same as aforesaid, as of the principal sum secured by the charge, or intended so to be and the interest thereof.

SCHEDULE (B.)

I *A.B.* of in consideration of the sum of £ paid to me by *C.D.* of do hereby mortgage to the said *C.D.* his executors, administrators, and assigns, all (describe the land to be mortgaged), together with all rights and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am seised or possessed of or have power to dispose of, to hold the premises to the said *C.D.* his executors, administrators, and assigns, by way of mortgage, for securing the payment by me, my heirs, executors, or administrators, to the said *C.D.* on the day of in the year , of the sum of £ and interest thereon at the rate of £ per centum per annum by equal half-yearly (or quarterly, as the case may be,) payments on the day of and the day of in each year, until the time of the actual payment of the said principal sum. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord 185 .

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No. 2.—Sketch of a Bill to facilitate the Transfer of Landed Property in England, and to establish a Register of the Title to such Property. *By Mr. W. D. Lewis.*

[*For convenience, and so as to avoid confusion in reference to the different state of the law in the two countries, the Bill is confined to England, but the scheme of it will be equally and even more readily applicable to Ireland.*]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in the construction of this Act the following words and expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,)

Interpretation clause.

The word " person," and words applying to any person or individual, shall apply to and include corporations, whether aggregate or sole:

The expressions " register office," " registrar," and " assistant registrar" shall respectively mean the land register office established under this Act, and the registrar or an assistant registrar (as the case may require) who may be appointed under this Act:

The word " district" shall mean a district formed under this Act:

The expression " commencement of registration" shall mean the commencement of registration under this Act as to any district which may be formed under this Act:

The word " lands" shall extend to all hundreds, honors, manors, messuages, lands, mines, minerals, and all other corporeal tenements and hereditaments, and to advowsons, rectories, and rentcharges or annuities, or periodical sums of money charged upon or payable out of any land, (except rentcharges in lieu of tithes, moduses, or compositions belonging to any spiritual or eleemosynary corporation sole, and except heriots and quitrents,) but not, except where the context or other provisions of the Act may require a different construction, any other incorporeal hereditaments, and not any undivided share of hereditaments, whether corporeal or incorporeal:

The word " estate" shall extend to an estate in equity as well as at law, and to an equity of redemption, and to the benefit of any contract for or touching lands:

The word " owner" as applied to any land shall include any person entitled in possession in fee simple or in tail, or quasi in tail, and any person entitled in possession for a life or lives, or for a term of years determinable on the dropping of any life or lives, or for a term of years of which not less than ninety-nine years are unexpired, not being a lessee at a rent, and also any person entitled in possession as tenant by the curtesy, whether at law or in equity, and any person entitled in possession, whether in fee or for any lesser estate as aforesaid, to the equity of redemption in any land, or to the land subject to any incumbrance, or a trust for the payment of any incumbrance, and any feoffees or trustees for charitable or other purposes entitled in possession:

The word " assurance" shall extend to a contract:

The word " will" shall extend to a codicil and to an appointment by will, or by writing in the nature of a will in exercise of a power:

The word " title" shall extend to a power or right to convey or otherwise affect lands:

The word " grantor" shall apply to any person by whom lands shall be conveyed, appointed, charged, or otherwise affected; and every person claiming derivatively under any assurance shall be considered as claiming under the same:

The word " addition," where the addition of any person whose name is required by this Act to be entered in any index to be kept at the said register office is hereby directed to be entered with such name, shall mean the description as to residence, title, rank, and profession or occupation of such person:

The expression "Lord Chancellor" shall include the Lord Keeper or Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

Act not to apply to copyholds or sites of churches, &c.

II. This Act shall not, except where it is herein otherwise expressly provided, apply to or affect any lands of copyhold tenure, or any copyhold estate, interest, or right therein, nor any land forming the site of or appurtenant to and used with any consecrated church or chapel or churchyard, or any public cemetery set apart under the authority of any Act of Parliament; but nevertheless this Act shall extend and apply to such lands of copyhold tenure as from time to time may be enfranchised, or may cease to be demisable by copy of court roll from and after the enfranchisement thereof, or from and after the time of the same ceasing to be demisable as aforesaid.

A "Land Register Office."

III. One public office, to be called "The Land Register Office," shall be established for the purposes of this Act, and it shall be lawful for the Commissioners of Her Majesty's Treasury to provide and appoint from time to time proper buildings for such office in a convenient place in or near London or Westminster.

A "Land Registrar for England."

IV. It shall be lawful for the Lord Chancellor from time to time to appoint for the said office a registrar, to be called "The Land Registrar General for England," and an assistant or assistants to such registrar, to be called "Assistant Land Registrar for England;" and every such registrar and assistant registrar shall hold his office during good behaviour: Provided always, that it shall be lawful for Her Majesty to remove any such registrar or assistant registrar from his office upon an address of both Houses of Parliament.

Clerks and other officers.

V. It shall be lawful for the registrar, with the approbation of the Lord Chancellor, from time to time to appoint for the said office such clerks and subordinate officers as may be necessary for the execution of the duties to be performed in such office, and at pleasure to remove them or any of them.

Qualification of registrar and assistant registrars.

VI. Every registrar and assistant registrar to be appointed as aforesaid shall before he enters upon the execution of his office take the following oath before the Lord Chancellor:

'I A.B. do solemnly swear, That I will faithfully and to the best of my 'ability execute the office of land registrar general or assistant land registrar 'for England. So help me GOD."

Security to be given.

VII. Every registrar and assistant registrar, and, in case the said Commissioners of the Treasury think proper, all or any of the clerks and subordinate officers to be appointed as aforesaid, shall give security for the due performance of the duties of his or their respective office or offices in such manner and to such amount as the said Commissioners shall deem fit.

Declaration of the object of the Act.

VIII. It is hereby declared to be the true intent and meaning of this Act that the ownership of and title to lands in England shall, after the commencement of registration under this Act, be established and manifested upon and by the register to be formed in pursuance of this Act, and the several indexes to be provided, made, and formed in connexion with or for the purposes of such register, as herein-after set forth; and further, that with that view the ownership of and title to such lands shall be placed or entered on such register in or by some one or more of the modes or processes by this Act authorized, allowed, provided, or enjoined for registering ownerships of land, according to the different circumstances and in the various cases to which such modes or processes may be applicable, or with reference to which the same are hereby authorized or provided to be used or observed.

Provision as to lands remaining unregistered after ten years.

IX. If at the expiration of ten years from the passing of this Act any lands in England to which this Act is applicable, or the ownership thereof, shall not have been registered or entered on the register under this Act in or by some one or more of the modes or processes by this Act authorized, allowed, provided, or enjoined as aforesaid, then it is the meaning of this Act that after the expiration of such period of ten years, if Parliament shall then see fit, such proceedings shall be taken and such arrangements shall be made, and such powers and authorities shall be created, for the purpose of bringing

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within the operation of this Act all lands to which this Act is applicable, which or the ownership whereof shall not then have been registered under this Act, and for completing the registration of the ownership of lands in England, as to Parliament in its wisdom shall seem meet.

And with respect to the commencement of registration under this Act, be it enacted as follows:

Districts to be formed.

X. After the first appointment of a registrar as aforesaid the registrar shall with all convenient speed, with the concurrence of such persons as Her Majesty may, from time to time, by warrant under Her Royal sign manual, appoint to act with the registrar in the formation of districts as herein-after mentioned, divide England into districts for the purposes of this Act, of such extent as (having reference to local divisions, the state and circumstances of ownership of land, the number, kind, and extent of the public maps available for the purposes of this Act, and other circumstances,) may, in the opinion of the registrar, with such concurrence as aforesaid, be convenient for the registry of lands which may be established in each such district as herein-after mentioned, and for facilitating searches in the separate indexes to be kept as herein-after mentioned for such districts respectively; and the registrar may, with the concurrence of such persons as aforesaid, from time to time alter such districts.

Notice in the London Gazette as to when registration to commence.

XI. It shall be lawful for the registrar, with the consent of the Lord Chancellor, by notice published in the London Gazette, to appoint a time not earlier than three calendar months from the time of the publication of such notice when registration under the Act shall commence, and the time so appointed shall be the time of the commencement of registration under this Act.

Registration may be commenced in any one district before the others.

XII. It shall be lawful for the registrar, with the consent of the Lord Chancellor, to commence registration under this Act in any one county or in any one of the districts into which England may be divided as aforesaid, before and without extending or proceeding with registration under this Act to or in any other part of England; and in exercising this power regard shall be had as far as may be to the facilities for registration which any existing public surveys, maps, or plans of the lands in any county or district may furnish as compared with the existing surveys, maps, or plans of the lands in any other county or district.

A district registrar to be appointed for each district.

XIII. It shall be lawful for the Lord Chancellor from time to time to appoint one of the assistant registrars to be the registrar for any district in which a registry shall be established, who shall hold his office in like manner as the registrar general; and it shall be lawful for the registrar general (with the consent and approbation of the Lord Chancellor) to make rules for regulating all matters incidental to the method of registration as connected with such district, and from time to time to alter or rescind existing rules, and make others, and to hire or purchase houses, buildings, or lands for offices for the business of each district registry, and to alter, take down, rebuild, or adapt and fit up any buildings so acquired, and to authorize each district registrar (subject to and under such regulations as the registrar general shall deem expedient) to purchase books, stationery, and all other articles necessary for the district registry, and to appoint for the business of such registry, and dismiss or suspend clerks, officers, and servants, and to define their respective duties, and to pay them their respective salaries, and to define the mode (whether by a seal of office or otherwise, as the registrar general shall deem expedient,) in which matters relating to each district registry requiring authentication shall be authenticated, and the manner in which the person by whom, in the absence of the district registrar, his duties shall be performed: Provided always, that all acts done by any district registrar shall be deemed to be legally done until the contrary shall be proved.

District registrar to forward copies to registrar general;

XIV. Each district registrar shall, within a time to be fixed by the general regulations for the time being in force under this Act, forward to the registrar general an authenticated copy of every registration which shall be effected in his district.

XV. All sums of money which shall be received by or on account of each district registrar shall be accounted for to the registrar general, and the receipts and disbursements in respect of each district registry shall be accounted for by him in the same manner as the receipts and disbursements on account of the general register office are to be accounted for.

and to account to him.

XVI. All the powers and provisions of this Act, except those which in express terms are vested in or relate to the registrar general, may be exercised by and shall apply to each district registrar.

District registrar may exercise powers.

XVII. Every ownership which ought to be registered pursuant to this Act shall be registered in the registry within the district in which the lands forming the subject of the same shall be situate, or (at the option of the party registering the same) in the general registry: Provided always, that with respect to ownerships registered in district registries the registrar general shall cause provision to be made for such notice thereof being registered in the general registry as shall prevent the necessity of searches being made respecting the lands affected thereby, both in the registry of the district within which such lands are situated and also in the general registry.

Owners may register either in the district or the principal registry.

And with respect to maps, be it enacted as follows:

XVIII. In effecting the registration under this Act of any lands, or the ownership of any lands, which shall not already have been registered under this Act, the registrar shall insert or cause to be inserted in the description of such lands to be placed on the register as herein-after mentioned, or in the margin of such description, a reference to such public map as, under the provisions herein-after contained, shall be used by the registrar for or appropriated by him to the purposes of registration in the county, district, or parish in which the lands in question may be situated.

Registration of lands to refer to a public map.

XIX. It shall be lawful for the registrar general to authorize and direct the maps made and published and to be made and published under the direction of the master general and board of ordnance, or any altered or enlarged maps (founded upon the survey or revised survey of any part of England) which may be made under the direction of the said master general and board, and approved by the said registrar, and also the maps confirmed under the hands and seal of the Tithe Commissioners for England and Wales, to be used for the purposes of this Act; and the said registrar, where he thinks fit, may cause copies or reprints of all or any of the said maps, with any additions to or variations in the matters marked on the said maps which the said registrar may deem convenient for the purposes of this Act, to be made, and may, where he thinks fit, cause copies or reprints of any of the said maps on any enlarged scale or scales of any cities, towns, parts, or places to be made; and the maps or copies of maps which the said registrar shall direct to be used for the purposes of this Act shall be deposited in the said register office, and such maps shall be published and copies thereof shall be sold as the said registrar shall direct; and the said registrar may, for any of the purposes of this Act, cause copies of any of the books of reference to the maps made for the commutation of tithes in England and Wales to be made and adapted, with such additions, omissions, or variations as he may think proper.

Ordnance and tithe commutation maps open to the use of the registrar.

XX. All awards, apportionments, agreements, writings, maps, and books of reference, in the custody of the Tithe Commissioners for England and Wales, shall be open to the use and inspection of the registrar or any person by him authorized, and such copies of or extracts from such awards, apportionments, agreements, writings, and maps as the registrar shall require shall be furnished to him for the purposes of this Act; and the registrar may, by summons under the seal of the register office, require the attendance of all such persons as he may think fit to examine upon any matter relating to any registration, or the formation of any map, or any other proceeding under the authority or for the purposes of this Act, and also make any inquiries and call for any answer or return as to any such matter, and also administer or receive declarations, and examine all such persons upon declaration, and cause to be produced before him upon declaration all court rolls, and all rate books, instruments of tithe apportionment, and other public writings, maps, plans, and surveys of or

Tithe commutation awards and documents.

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belonging to any parish, or copies thereof respectively, in anywise relating to any such Matter.

Power to registrar to use other public maps, but preference to be given to ordnance and tithe commutation maps.

XXI. The registrar general may, if he shall think fit, use for the purposes of registration under this Act any public map or plan previously made of the lands in question, of the accuracy of which he shall be satisfied, other than and besides maps published under the direction of the master general and board of ordnance, or copies thereof, and other than and besides maps or plans confirmed under the hands and seals of the Tithe Commissioners, but preference shall be given to the said maps published under the direction of the said master general and board, or copies thereof, and maps or plans which shall have been confirmed under the hands and seal of the Tithe Commissioners, or copies thereof, and maps or plans of the lands of parishes which may be made and provided pursuant to the authority herein-after for that purpose contained.

Power to any landowner to apply to have the parish mapped, and this to be done if one third consent.

XXII. In the case of any parish the lands within which shall not be the subject of or shall not have been included in any public map which for the time being may have been adopted by the registrar or be in use by him for the purposes of this Act, any one or more of the landowners of any parish the lands of which may be subject to be registered under this Act may make application to the registrar to sanction a survey, admeasurement, mapping, and planning (herein-after for the sake of brevity called survey and mapping) of the lands of such parish, for the purposes of this Act; and in case the registrar shall, on the statements contained in such application, and on inquiry into the correctness of such statements, think such survey and mapping expedient, the registrar shall thereupon cause notice to be given by advertisement of his intention to authorize the proposed survey and mapping, and may, in case he shall think fit, cause meetings of the landowners of such parish to be holden by an assistant registrar for the purpose of taking the consents or dissents of such landowners, or give such directions as to the mode of taking and verifying consents as he shall think think fit; and in case it shall appear to the satisfaction of the registrar that landowners representing not less than one third of the lands of the parish shall have consented to such survey and mapping, then the registrar shall cause notice to be given by advertisement of his intention to proceed with such survey and mapping under the provisions herein contained.

Who are landowners for this purpose.

XXIII. For the purposes of such survey and mapping, the landowners or persons interested in the lands of any parish subject to be surveyed and mapped under this Act shall be deemed to be the persons mentioned as landowners in the Act of the sixth and seventh William the Fourth, chapter seventy-one, with reference to lands the tithes of which are subject to be commuted under that Act, and no others.

Meeting to be called for appointing a surveyor.

XXIV. As soon as conveniently may be after the expiration of thirty days from the publication by the registrar of the notice of his intention to proceed with a survey and mapping under this Act, the registrar shall call a meeting of the landowners in the parish in question, of which twenty-one days notice shall be given by advertisement, to be held for appointing a surveyor to survey and map and act in the survey, admeasurement, mapping, and planning of the lands of such parish; and the registrar, if he shall so think fit, may appoint an assistant registrar to be present and to preside at such meeting, and to take the votes of the persons present thereat.

When survey made, map and book of reference to be deposited for inspection, and objections may be made.

XXV. After the surveyor shall have been appointed as aforesaid, he shall proceed to make a survey and admeasurement and prepare a map or plan of the lands of the parish, with a book of reference thereto, and after he shall have completed his survey of and prepared a map or plan of the lands of the parish, he shall cause such survey, or the writing containing the result thereof, and such map and book of reference, to be deposited and to remain for fourteen days at the least for the inspection of all persons interested therein at some public place within the parish, and shall cause notice to be given by advertisement of such deposit; and in case any party dissatisfied with such survey or map or book of reference shall, within seven days next after notice by the surveyor of such deposit, cause to be delivered to the registrar notice in writing of such dissatisfaction, and of his desire to have the matter in question determined by the registrar, or in case the registrar shall, on the

representation of any person interested, or on the information given by the surveyor, be of opinion that in any respect such survey or map or book of reference shall be inaccurate, erroneous, or insufficient, then the registrar shall appoint some convenient place and time for hearing and determining the matter in question as he shall think fit, and the determination of the registrar shall be final and conclusive on the matter in question, and the surveyor shall act therein and in relation thereto as the registrar shall direct.

What map and survey to contain.

XXVI. The map to be prepared by the surveyor shall comprise and show the lands of the parish in such manner, and the same and the book of reference shall contain such references and other particulars, as the registrar shall by any general or special instructions direct; and such map and book of reference shall be signed by the surveyor, and shall, together with the survey or the writing containing the same, be sent to the office of the registrar; and when the registrar shall have heard and determined all such objections made as aforesaid, and made such inquiries as he shall think fit in relation to such survey or map or book of reference, he shall approve the same, or cause the same to be amended, as he shall see occasion, and shall finally confirm such survey and map and book of reference, or amended survey and map and book of reference, with the date of such confirmation, under his hand and seal.

Informalities cured.

XXVII. No such map or book of reference confirmed shall be impeached by reason of any mistake or informality therein, or in any proceeding relating thereto, or on account of any want of any notices or consents required by this Act, or on account of any defects or omissions in any previous proceeding in the matter of the survey and mapping.

Power to enter for purpose of mapping and survey.

XXVIII. For surveying and mapping any lands under this Act, and for the other purposes of this Act, it shall be lawful for the registrar or surveyor, or any person to be appointed by such registrar or surveyor, at any time after application has been made to the registrar to sanction any such survey and mapping as aforesaid, to enter into, view, and examine, survey or admeasure, any of the lands to be included in the proposed survey or map, without being subject to any action or molestation for so doing.

How expenses of survey and mapping to be borne.

XXIX. The expenses of every survey and mapping of the lands of any parish under this Act shall be borne and defrayed by the several landowners or persons interested in such lands in such shares and proportions, and shall be paid at such time and place or respective times and places, and to such persons, as the surveyor, with the approbation of the registrar, signified by writing under his hand and seal, shall direct; and the like notices requiring payment of such expenses shall be given in the like mode and at the like times by the surveyor, and such surveyor shall have the like remedies in default of payment of such expenses, as by the one hundred and twenty-fourth and one hundred and twenty-sixth sections of the said Act of the eighth and ninth Victoria, chapter one hundred and eighteen, are mentioned and provided and given to and vested in the valuer therein mentioned with respect to the expenses of any such inclosure as therein mentioned.

And with respect to indexes, be it enacted as follows:

Index of registered owners of lands.

XXX. There shall be provided and kept for each district formed under this Act an alphabetical index of the names of registered owners, and, save where otherwise provided by the regulations to be made under this Act, and subject to such provision in relation to the indexes of the names of registered owners as may be made by such regulations where any ownership is indexed or referred to in the land or map index herein-after mentioned, and also where the regulations to be made under this Act require such entry as herein-after mentioned to be made in relation to such ownership, the name of the registered owner, with his addition, shall be entered in the index of the names of registered owners for the district in which the lands forming the subject of the registered ownership are situate, and an entry shall be made opposite to the name to be so entered, which entry shall contain a reference to the land or map index in which such ownership is referred to, and also to the index of the owners of charges and the index of the owners of leases in which the name of the registered owner of any charge or lease (if any) affecting the lands forming the subject of such registered ownership shall be indexed; and where the lands forming the

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subject of the registered ownership are situate in more than one district, like entries shall be made in the indexes for each district in which any such lands are situate; and wherever any district shall comprise more than one parish there shall be a separate alphabetical index of the names of registered owners for each parish in such district; and in each such separate parish index the name of the registered owner, with his addition, shall be entered in the index of the names of registered owners for the parish in which the lands forming the subject of the registered ownership are situate; and where such lands are situate in more than one parish like entries shall be made in the indexes for each parish in which any such lands are situate.

Index of "owners of charges," and index of "owners of leases."

XXXI. There shall be provided and kept for each district formed under this Act an alphabetical index of the names of "owners of charges," and another similar index of the names of "owners of leases;" and, save where otherwise provided by the regulations to be made under this Act, and subject to such provision in relation to the indexes of "owners of charges" and "owners of leases" as may be made by such regulations, where any registered charge or lease is referred to in the land index or map index herein-after mentioned, and also where the regulations to be made under this Act require such entry as herein-after mentioned to be made in relation to such registered charge or lease, the name of the owner of the registered charge or lease, with his addition, shall be entered in the index of the names of "owners of charges" or "owners of leases" (as the case may be) for the district in which the lands forming the subject of the registered charge or lease are situate; and an entry shall be made opposite to the name to be so entered, which entry shall contain a reference to the land index or map index in which such registered charge or lease is referred to, and also to the index of registered owners, in which the name of the registered owner (if any) of the lands affected by such charge or lease shall be indexed; and where the lands forming the subject of the registered charge or lease are situate in more than one district, like entries shall be made in the indexes for each district in which any such lands are situate; and wherever any district shall comprise more than one parish, there shall be a separate alphabetical index of the names of registered owners of charges, and another similar index of the names of registered owners of leases for each parish in such district; and in each such separate parish index the name of the owner of the registered charge or lease, with his addition, shall be entered in the index of the names of "owners of charges" or "owners of leases" (as the case may be) for the parish in which the lands forming the subject of the registered charge or lease are situate; and where such lands are situate in more than one parish, like entries shall be made in the indexes for each parish in which any such lands are situate.

A land index, as soon as may be, to be formed for each district or county, or for separate parishes, when expedient.

XXXII. As soon as registration under this Act shall have sufficiently extended or advanced in any such district, county, or parish, as herein-after mentioned, to furnish materials for a land index for any district formed under this Act, or for any county, or for any parish for which it may seem to the registrar expedient to provide a land index apart from the district or county in which it is situate, a land index shall be provided and kept in the register office, in such form as the registrar shall approve, so as to show in every such index the lands and divisions of land within such district, county, or parish, having references in every such index from the several lands and divisions to the map or maps which may be used for such district, county, or parish for the purposes of this Act; and it shall be lawful for the registrar, if he shall see occasion, to cause to be inserted in such respective land indexes, or give directions for the insertion therein, from time to time, of the names or short descriptions of the manors and incorporeal hereditaments which cannot be conveniently indexed by reference to maps within the respective parishes and other divisions of land in every such district or county respectively, and every such land index shall be deposited and kept in the said register office, and shall be a land index to be used for the purposes of this Act.

A map index until the land index formed.

XXXIII. In the meantime and until such land index as aforesaid can or shall be provided there shall be also provided and kept, for the purposes of this Act, a "map index" for each district, county, or parish for or to which, or for or to the lands within which, a separate public map shall be used or appropriated by the registrar in the registration of lands or the ownership thereof under

this Act; and such map index shall be formed, in the case of each such district, county, or parish, upon and by means of a copy on an enlarged scale of the map which shall be so used for or appropriated to such district, county, or parish, or the lands within the same as aforesaid, with such additions, omissions, or variations as the registrar shall think fit; and upon the occasion of the first registration under this Act of any lands, or the ownership of any lands, situate within such district, county, or parish, references shall be made, in such form as the registrar shall approve, in connexion with such lands as delineated on such map and in the margins of such copy of such map, or otherwise, or in a book of reference thereto, to the index of registered owners, and to the index of owners of charges, and to the index of owners of leases, or to the respective heads or symbols or denominations under which the ownership of such lands, or of charges or leases thereon, shall be entered, or will be found in the register to be kept in pursuance of this Act.

And with respect to the qualities and incidents of the ownership of lands the ownership whereof shall be registered under this Act, be it enacted as follows:

Ownership to be henceforth either registered ownership or unregistered ownership, and all other distinctions done away with.

XXXIV. As to all lands the ownership of or title to which shall from time to time have been recorded, placed, or entered on the register under this Act, and after the time allowed by this Act for the compulsory registration of the ownership of land shall have expired, then, as to all lands in England, the ownership or seisin of and property in and title to such lands, subject to the provisions herein-after contained with reference to interests created in any lands before the first registration of such lands under this Act, and which are herein-after shortly referred to as "existing interests," and with reference to the leases hereby exempted from registration, shall be in law thenceforth distinguished into and denominated the registered ownership and the unregistered ownership; and, save as herein otherwise provided, there shall thenceforth as to such lands or the property therein be no distinction between the legal estate and the equitable estate, nor between estates or interests at law and estates or interests in equity, nor between estates or interests at common law and estates or interests by way use, nor between legal estates and trusts; but, subject and save as aforesaid, all and every such differences or distinctions and denominations shall be embraced by and absorbed in the distinction between the registered and the unregistered ownership, as herein declared and set forth; and all differences or distinctions in the nature, quality, and incidents of property in land shall, subject and save as aforesaid, be referred to, and be subordinate to, and be determined by, the distinction between the registered and the unregistered ownership, as herein declared and set forth.

What the registered ownership is, and its principal quality.

XXXV. The registered ownership shall be the ownership which from time to time shall be manifested by the register as to the respective lands forming the subject of the records on or entries in such register; and in respect of quantity each such registered ownership shall, as to the lands forming the subject of it, be always deemed and taken to be the simple and entire ownership, not divisible or distributable into less or more qualified portions, forms, or degrees of registered ownership, and not capable as registered ownership of any subdivision or modification into any particular limited or partial estates or interests, estate or interest: Provided always, that charges and leases which by this Act are specially admissible to the register in addition to or as part of or as qualifications of the registered ownership, and which shall from time to time as to any lands actually be recorded or appear upon the register conformably to this Act, shall also for the purposes of this Act be deemed registered and not unregistered ownerships.

Uses and trusts abolished, except trusts in the sense declared by the Act.

XXXVI. Subject to the provisions as to existing interests, and the other provisions in this Act contained, uses and trusts, other than trusts as modified by and in the sense authorized by this Act, shall, as to all lands forming the subject of any registered ownership, be abrogated or abolished; and the registered ownership herein-before defined shall be deemed to be a legal and equitable right and ownership, cognizable as such in the courts of law as well as in courts of equity, but, in so far as it is hereby declared to be an equitable right and ownership, this provision is and shall be construed to be subject to the provisions herein-after contained with reference to the unregistered ownership.

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Right of disposition incident to the registered ownership.

XXXVII. Subject to the provisions herein contained as to existing interests and the other provisions herein contained, the right to dispose of and transfer the ownership of and property in land in fee, and all right and interest therein, including the right to charge and lease the same, shall belong and be incident to and be taken as forming part of the registered ownership.

What the unregistered ownership is.

XXXVIII. The unregistered ownership shall comprise and be the right or interest (if any) which in every case any person (if any) other than and not being the registered owner may have to or in the enjoyment or profits of or to or in the produce of the sale of the lands forming in such case the subject of the registered ownership, or other the right or interest which any person other than as aforesaid (if any) may have to or in such land or its profits in respect of any present, future, or expectant estate or interest, or any right or possibility of succession less than or not being the registered ownership: Provided always, that the existing interests, to which on the first registration of any lands under this Act the registered ownership shall be subject, shall not be deemed unregistered ownership for the purposes of this Act: Provided also, that any charge or lease which by this Act is admissible to the register in addition to, or as part of, or as a qualification of, the registered ownership, and which shall actually be recorded or appear upon the register conformably to this Act, shall not for the purposes of this Act be deemed an unregistered ownership.

In what sense there may be trusts.

XXXIX. For the purposes of the jurisdiction of the high court of Chancery, so far as the same can hereafter be exercised compatibly with this Act, the right or interest (if any) which in any case any person other than and not being the registered owner (if any) may have to or in the enjoyment or profits of or to or in the produce of the sale of the lands forming in such case the subject of the registered ownership, or other the right or interest which any person other than as aforesaid (if any) may have to or in such lands or their profits in respect of any present, future, or expectant estate or interest or any right or possibility of succession less than or not being the registered ownership, shall or may be deemed to be of the nature of a trust, but only in the sense authorized or declared by this Act, and not further or otherwise, and the person interested in respect or by virtue of any such trust shall or may, as respects the registered ownership, be deemed to be a beneficiary, but subject to the provisions herein contained touching the registered ownership: Provided always, that this clause shall not include or be taken to apply to the existing interests in the last clause mentioned.

The relation between the registered and the unregistered ownership.

XL. In any case where, besides the registered ownership, there shall happen to be an unregistered ownership in the same land according to the provisions herein-before contained, such unregistered ownership shall not, except as hereinafter expressly provided, be deemed to be or to comprise or to confer an estate or interest in the lands forming the subject of the registered ownership, nor shall the same, except as aforesaid, be deemed to be or to comprise or to confer an estate or interest in any manner qualifying, controlling, or limiting the registered ownership of such lands, but the right or interest constituting the unregistered ownership, or in respect of which there may exist an unregistered ownership touching such lands, shall entitle the beneficiary in a court of equity to enforce the performance by the registered owner of such duty as properly ought in respect of such unregistered ownership to be observed or performed by him as regards the lands of which he is the registered owner, or the enjoyment or profits thereof, or the produce of the sale of the same; and for giving effect to such last-mentioned right of such beneficiary, and for better enforcing the performance of such duty by such registered owner, and also for determining the nature of such duty and the mode of observing and performing the same, but for no other purpose, such duty shall be deemed to be a trust cognizable by the high court of Chancery, and is hereby made subject to the jurisdiction of such court, but so only that such trust shall be enforced consistently with the other provisions of this Act, and as a trust only in the sense declared or authorized by this Act, and not otherwise.

How far the unregistered ownership may affect the right of disposition.

XLI. Notwithstanding the existence of any trust affecting the registered ownership in respect of any unregistered ownership as aforesaid, the absolute right or power of disposition hereby attached and made incident to the registered ownership shall not be deemed to be thereby controlled or affected, and all

persons shall or may contract and deal with the registered owner as to the lands of which he is registered owner, and take a transfer from him of the registered ownership and of the lands which may be the subject of the same, in the same manner and with the same effect as if there were no unregistered ownership affecting the land which may be the subject of such contract, dealing, or transfer, and of such registered ownership, and no trust affecting such registered owner: Provided always, that this clause shall be subject to the provisions with respect to existing interests and with respect to disabling Acts and inhibitions herein contained: Provided also, that this clause shall be taken to be intended for the protection or in favour of purchasers for valuable consideration and without fraud, and that every or any person who shall become transferee of the registered ownership without valuable consideration, or registered owner by transfer without valuable consideration, shall be subject in respect of such registered ownership to the like trust (if any) as previously to such transfer may in respect of the unregistered ownership according to the provisions herein-before contained have affected the registered owner by whom such transfer without valuable consideration was made, or whose registered ownership shall so have been transferred without valuable consideration: Provided nevertheless, that the last proviso shall not extend or apply to or include any subsequent registered owner who shall be a purchaser for valuable consideration and without fraud, either immediately or derivatively from or under the person who shall have become registered owner without valuable consideration as aforesaid.

The obligation of trusts under the Act as against the registered owner and volunteers under him.

XLII. Notwithstanding the provisions herein-before contained, it is hereby declared, that in any case in which, according to the provisions herein-before contained, there shall be a trust or unregistered ownership subsisting, then, as between the registered owner personally and the person interested in respect of such trust or unregistered ownership, but not further or otherwise, the registration of the ownership in the name of the registered owner, or the fact of his being such registered owner, shall not be deemed or taken to entitle such registered owner to hold, possess, or enjoy the lands forming the subject of such registered ownership, otherwise than subject to the execution of the trust which may be existing in such case as herein-before declared in favour of the beneficiary or unregistered owner, nor shall such registered owner as between him personally and such beneficiary be deemed to have any greater interest in or power of disposition over the lands forming the subject of such registered ownership than before the passing of this Act, in case there were a similar trust affecting the same lands, such registered owner, being a trustee, would by the rules of courts of equity have had or been entitled to as against his cestuique trust in or over the lands forming the subject of such trust: Provided always, that nothing in this clause contained shall in any manner concern or affect any person becoming a transferee of the registered ownership from, through, or under any such registered owner as in this clause mentioned, unless he shall be a transferee from such registered owner without valuable consideration or by fraud.

Notice not to affect in equity where no fraud.

XLIII. The title by the provisions herein contained given to or declared to be vested in any person becoming registered owner shall not as respects any such registered owner, other than a person becoming such without valuable consideration or by fraud, be taken away by any court of equity merely in consequence of such registered owner having been affected with notice, or by the operation of any doctrine of notice.

Further provision as to notice in favour of transferees of the registered ownership.

XLIV. Where any lands become vested in a registered owner according to the provisions of this Act, no person subsequently having or claiming the registered ownership of the same lands by transfer from or under such registered owner, other than a transferee without valuable consideration or by fraud, shall be affected or bound by reason only of notice of any trust or unregistered ownership or equity affecting such registered owner in respect of such lands, any rule of courts of equity to the contrary notwithstanding.

What is meant by the exception of fraud in the several provisions.

XLV. In the construction and interpretation of and in carrying out the provisions of this Act the word "fraud" shall be understood to mean and shall be confined to conduct or circumstances of conduct deemed fraudulent by a court of equity; but fraud shall not be imputed to a person who shall

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take a transfer for valuable consideration from a registered owner, merely on the ground of such person knowing that the registered owner has no beneficial interest, and that no power of sale is given to or vested in him over the unregistered ownership.

Right and power of settling land not to be affected so far as respects the unregistered ownership, but long terms for years not allowed other than leases.

XLVI. Subject to the provisions in this Act contained with respect to the registered ownership, and in subordination always to the registered ownership and the qualities thereof and incidents thereto as herein declared, any lands or the unregistered ownership thereof may from and after the registration of the ownership of such lands under this Act be settled, aliened, devised, conveyed, disposed of, entailed, limited, and dealt with for the like estates, and in the like modes, and subject to the like restrictions, and for the like periods, and generally in the like manner, save as herein otherwise expressly provided, as by the rules of law or equity such lands or any legal or equitable interest therein might or could before such registration of the ownership thereof have been settled, aliened, devised, conveyed, disposed of, entailed, limited, or dealt with; and all and every such settlements, alienations, devises, conveyances, dispositions, entails, limitations, and dealings of or concerning or with any lands, or the unregistered ownership thereof, shall (subject as aforesaid, and in subordination as aforesaid, and save as herein otherwise expressly provided,) have the like force, validity, operation, and effect, to all intents and purposes, and shall operate to create the like estates, interests, or powers, as the same would have had or created as to such lands by the rules of law or equity, if the same respectively had been made, executed, created, or done before such registration of the ownership under this Act and before the passing of this Act: Provided always, that after the commencement of registration under this Act no estates or terms for years shall be created or allowed to be created of or concerning any lands other than and except leases for years, whether occupation leases, reversionary leases, farming or agricultural leases, leases at rackrent, building leases, repairing or improving leases, mining leases, or leases of rights of way, or the like; and in any case where by any Act of Parliament or deed or otherwise any person has or may have a power to make a mortgage for a term of years, or to limit or to create a term of years for securing or raising a sum of money, or for any other purpose, such person shall be at liberty to make a mortgage or create a charge for securing such sum of money or for any such other purpose, of or upon the registered ownership of the lands referred to in or by such power, according to the provisions of this Act, and the "Title to Real Property Act, 1856," touching mortgages and charges, and to register such mortgage or charge under this Act: Provided also, that all estates, interests, rights, and powers which may as to any lands be created, limited, or made to arise in, by, or under any such settlement, alienation, devise, conveyance, disposition, entail, limitation, or dealing as aforesaid shall, except so far as the same may or can or actually shall, conformably with the provisions of this Act, be entered as or included in the registered ownership of such lands, be deemed and taken to constitute and be or form part of the unregistered ownership, as the same is herein-before authorized and declared.

Representatives of and volunteers under registered owner within the meaning of provisions relating to registered owner.

XLVII. The provisions herein-before contained declaring the position of registered owners with reference to any trust or unregistered ownership, in the various cases herein-before in that behalf mentioned, shall in each instance or case be taken to include or apply to the heirs and devisees or real representatives of the registered owner, as well as the registered owner himself, and also to include or apply to persons becoming registered owners through or under such heirs or devisees or real representatives without valuable consideration; and the like rule or provision as in the respective cases before mentioned is herein-before provided, enacted, or made with respect to or as affecting any registered owner shall in the same respective cases be taken to apply to or affect the heirs or devisees or real representatives of such registered owner, and any person becoming registered owner through or under any such heirs or devisees or real representatives without valuable consideration.

Right of possession and management of lands to belong to unregistered

XLVIII. Nothing in this Act contained shall hinder or prevent any person who for the time being, according to the provisions of any deed, settlement, or instrument affecting or declaring or relating to the unregistered ownership in

any lands, may be entitled to have the possession, enjoyment, management, or receipt of the profits of such lands from so possessing, enjoying, managing, or receiving the profits of such lands; but, on the contrary, unless and until there shall be a transfer of the registered ownership of such lands, under the provisions of this Act, to a person whom the unregistered ownership of such lands will not, according to the provisions of this Act, affect, any and every person who in respect of such unregistered ownership, or according to the provisions subsisting as to and affecting the same, may be entitled to possess or enjoy, manage or receive, the profits of such lands, shall have and may exercise all and singular the same rights and powers, and do and execute the same acts, matters, and things, as to and for the possession, enjoyment, management, and receipt of the profits of such lands, as such person would have had or might have exercised, done, or executed in relation to such lands before the passing of this Act in the case of there being a trust of such lands in his favour corresponding to such right or interest as he may have as aforesaid in the said unregistered ownership.

owner, where, according to present law, if cestuique trust he would have such right; but this not to affect purchasers.

XLIX. Notwithstanding the provisions herein contained in relation to the registered ownership, all leases which may be granted of the lands forming the subject of such registered ownership by any person who in respect of the unregistered ownership for the time being of such lands may for the time being have a power to grant such leases, or may be entitled to have the possession or enjoyment or management or receipt of the profits of such lands, shall (subject to the provisions herein contained with respect to the registration of leases) be as valid and effectual as well against the registered owner as also against all subsequent registered owners of the same lands, and all subsequent registered lessees under him or them, and all other persons interested or becoming interested in such lands, as if such leases were granted by the registered owner for the time being of such lands, and (if requiring registry) were in fact registered under this Act, and there were no unregistered ownership of or affecting such lands; and this clause or provision shall apply to and protect as well leases to which the registered ownership for the time being is herein-after provided to be deemed to be subject without the registration of such leases, as also those leases which are in all cases hereby required to be registered, subject to the registration of the same.

Leases by unregistered owner effectual.

L. Where the registered owner of any lands shall be a person named as such by or who shall have become such for the purposes of any settlement of such lands, or any deed, will, or instrument under or by virtue of which such lands or the unregistered ownership thereof shall have been limited to or in trust for any persons by way of succession, then and in such case as between such registered owner and the beneficiaries interested under such settlement, deed, will, or instrument, he shall not be at liberty to retain the registered ownership or to remain on the register as registered owner for any longer period than or under any other circumstances than according to the rules of courts of equity he would before the passing of this Act have been entitled to retain the legal estate of such lands if he had been trustee of the fee thereof upon trusts or for purposes affecting such lands, similar to the provisions affecting the unregistered ownership which may be contained in any such settlement, will, deed, or instrument as aforesaid, and he shall be bound to make a grant of the registered ownership of such lands to such person as shall be named in that behalf by the beneficiaries who, if there had been such a trust as aforesaid, would before the passing of this Act have been entitled to require a conveyance of the legal estate in such lands from such trustee: Provided always, that nothing in this clause contained shall in any manner affect or concern any person who shall actually become registered owner by transfer from or under the before-mentioned registered owner so bound to make such grant as aforesaid, other than a person who shall become such registered owner or transferee without valuable consideration or by fraud.

Registered owner, where only a trustee, not to retain the registered ownership as against the beneficiaries after trusts satisfied; but this not to affect purchasers.

LI. No estate by the curtesy, nor estate in dower, nor any rights of curtesy or dower, shall as such be or become registered ownerships, nor shall any such estates or rights be attached to or arise by implication from or as a consequence of any registered ownership, or the estate of any registered owner, otherwise

Curtesy and dower part of the unregistered ownership.

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than as interests forming parts of, or interests comprised in, the unregistered ownership, and entitling the persons having or succeeding to the same to be in possession of or receive the rents and profits of the lands forming the subject of the registered ownership, subject and without prejudice to the provisions herein contained in relation to the registered ownership and the transfer thereof.

Volunteers under purchasers to have same right as the purchasers.

LII. Nothing in this Act contained touching transferees of the registered ownership without valuable consideration shall be deemed or taken to apply to persons who become registered owners without valuable consideration by transfer from or under a registered owner who claimed for valuable consideration and without a fraud; but, on the contrary, every person who shall claim as registered owner without valuable consideration under any person who shall have claimed as registered owner for valuable consideration and without fraud shall be entitled to the same benefit, right, title, preference, protection, and advantage, under the provisions of this Act, as the person who shall have so claimed as registered owner for valuable consideration.

Not necessary to inquire whether registered owner for the time being became so without valuable consideration.

LIII. Notwithstanding the several provisions herein-before contained relating to persons becoming registered owners or transferees of the registered ownership without valuable consideration or by fraud, it shall not in any case be necessary for any person contracting or dealing with, or taking or proposing to take a transfer from, any registered owner, to inquire or ascertain, nor shall it in any manner concern any such person to inquire or ascertain, whether such registered owner or any prior registered owner of the lands in question is or was a registered owner, or a person who became registered owner without valuable consideration or by fraud, or a person who may have taken a transfer of the registered ownership without valuable consideration or by fraud.

Transferee not affected by fraud in a prior transfer.

LIV. Nothing in this Act contained touching a registered owner or registered ownership affected by fraud shall be deemed or taken to apply to or affect persons who become registered owners for valuable consideration and without fraud by transfer from a registered owner affected by fraud.

What is meant by transferee without valuable consideration.

LV. With reference to and for the purposes of the several provisions herein contained touching transferees of the registered ownership without valuable consideration, or persons becoming registered owners without valuable consideration, it shall be sufficient, in any case to which such provisions may be alleged to be applicable, and for disproving the same, to show that valuable consideration, moved from the transferee or person becoming registered owner, and that for or on account or in consequence of such valuable consideration moving from him a grant of the registered ownership or transfer thereof was made to him by the previous registered owner, or by the authority of a court of equity; and it shall not be necessary to show that such valuable consideration came into the hands of or enured to or in favour of the previous registered owner.

And with respect to easements and occupation leases, be it enacted as follows:

Easements and occupation leases not to require registration, provided as to lease possession goes along with it.

LVI. Every registered ownership under this Act, and the lands forming the subject thereof, and the title and right of disposition incident or attached thereto or comprised therein, and every registered charge or lease, and the lands forming the subject thereof, shall at all times, as against any person becoming registered owner of such lands, or a charge or lease thereof, be deemed and taken to be subject to such ways or roads and rights of way or road, lights and rights to light, watercourses and rights of water and other easements, commons and rights of common, rights of fishery and rights of sporting, heriots, quit-rents, and rentcharges in lieu of tithes, as may be for the time being or from time to time existing over or upon or affecting or issuing out of the lands forming the subject of such registered ownership, charge or lease, and also to any lease or agreement for a lease for any term not exceeding twenty-one years, to commence from the date of such lease or agreement, or from any time not exceeding twelve calendar months from the date of such lease or agreement, in all cases where the actual possession shall go along with such lease or agreement, from the time of making the same, or where the actual possession thereunder shall not at the time of any such person becoming registered owner,

incumbrancer, or lessee as aforesaid of the lands comprised in such lease have been discontinued or relinquished.

Where possession does not go along with it, lease to be registered as well as other leases.

LVII. Where the actual possession shall not go along with any such lease or agreement as in the last clause mentioned from the time of making the same, or where the actual possession thereunder shall be discontinued or relinquished, such lease or agreement shall be void as against any person becoming registered owner or transferee of the registered ownership, or registered incumbrancer or lessee of the lands comprised in such lease or agreement, during the interval between the time of making such lease or agreement and the time when actual possession shall go along with the same, or during the discontinuance or after the relinquishment of the actual possession thereunder, unless such lease or agreement be duly registered under this Act before such person shall become registered owner or transferee of the registered ownership or registered incumbrancer or lessee as aforesaid.

And with respect to the first registration of the ownership of any lands under or after the passing of this Act, and the effect thereof, be it enacted as follows; viz.

On every sale, &c. after the commencement of registration, comprising the fee, the ownership thereunder to be registered.

LVIII. Every sale, transfer, settlement, mortgage, assurance, and transaction of or concerning lands which shall take place or be made after the commencement of registration, and which shall in terms extend to or include, or be intended to extend to or include, the fee or inheritance of or whole interest in such lands, or which shall not in terms be confined to an interest less than the fee or inheritance of or whole interest in such lands, shall depend for its efficacy upon the registration, in the manner herein provided, of the lands included in such sale, transfer, settlement, mortgage, assurance, or transaction, and also of the title or ownership in fee passed by or intended to be derived under such sale, transfer, settlement, mortgage, assurance, or transaction, or which, if there were an unimpeachable antecedent title in the person making or effecting such sale, transfer, settlement, mortgage, assurance, or transaction, would or might be passed thereby or derived thereunder, or upon the registration, in the manner herein provided, of such lands, and such title or ownership as, according to the provisions herein-after contained, may represent upon the register, or ought to be registered as representing, the title or ownership in fee so passed or intended to be derived, or which would be passed or derived as aforesaid.

Subsequent ownership, &c. first registered to prevail.

LIX. Every sale, transfer, settlement, mortgage, assurance, and transaction of or concerning lands to the efficacy whereof such registration as aforesaid is hereby made necessary shall, so far as regards the lands included or intended to be included therein or affected or intended to be affected thereby, be void as against any person claiming any title or ownership to or of or charge on or lease of such lands which may subsequently be duly registered in the manner herein provided, unless the title or ownership passed by or intended to be derived under such sale, transfer, settlement, mortgage, assurance, or transaction, or which would or might be passed thereby or derived thereunder, as before mentioned, or such title or ownership as may represent or ought to be registered as representing the same, as before mentioned, has been registered in the manner herein provided before the registration of such subsequently registered title or ownership, charge or lease.

How the registered owner, for the purposes of the sale, &c., to be named.

LX. After the commencement of registration, every sale, settlement, transfer, assurance, and transaction of or affecting lands, to the efficacy whereof such registration as aforesaid is hereby made necessary, other than a mortgage or a transaction by way of charge within the definition of a charge herein-after contained, shall, so far as regards the registered ownership, or the ownership to be entered on the register, either be made or effected by a deed simply granting the lands affected by the transaction to the purchaser or a trustee, or some person named in the grant, without any trusts, covenants, or other special matter (and which grant may be in the form set forth in schedule A. to this Act annexed), or shall be made or effected by a deed which, if not merely a simple grant in the form set forth in the said schedule A., shall contain a provision or declaration naming the person who shall be registered owner, and in whose name the title or ownership of the lands passed by or intended to be derived under or affected by such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, or which, if there were an

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unimpeachable antecedent title in the person making or effecting the same, would or might be passed thereby or derived thereunder or affected thereby, shall be registered under this Act; and if, in the case of any such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, there shall be no such deed by way of simple grant as aforesaid, and no provision or declaration in any deed as aforesaid naming a person to be registered owner as aforesaid, or if, there being such a provision or declaration, the same shall for any reason fail, then and in every such case the registrar shall be at liberty and is hereby required, upon such notice to any party or parties as he shall in each case deem proper, to name the person who shall be registered owner of the lands in question, and in whose name the title or ownership of the same lands shall be registered under this Act.

Who to be registered owner for the purposes of the sale, &c.

LXI. If in the case of any such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, there shall be a deed by way of simple grant as aforesaid, the person to whom such grant shall be made or purport to be made shall be entered upon the register as registered owner of the lands included in such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, and the ownership of such lands shall be placed or entered in his name in the register; and if in the case of any such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, there shall be a provision or declaration in a deed naming a person to be registered owner of the lands in question, as before mentioned, then the person so named shall be entered upon the register as registered owner of the lands included in such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, and the ownership of such lands shall be placed or entered in his name in the register; and if in the case of any such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, there shall be no such deed by way of simple grant as aforesaid, and no provision or declaration in any deed naming a person as registered owner as aforesaid, then the person who in such case shall be named by the registrar to be registered owner of the lands in question, under the authority hereinbefore in that behalf given to him, shall be entered upon the register as registered owner of the lands included in such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, and the ownership of such lands shall be placed or entered in his name in the register.

What evidence of title and possession to be produced on application to register on sale, &c.

LXII. Every person who shall apply to have the ownership of any lands registered under this Act, upon the occasion of or for giving effect to any such sale, settlement, transfer, assurance, or transaction as aforesaid, other than as aforesaid, of or affecting the fee of such lands, which shall be made or effected after the commencement of registration, shall show to the registrar, by statutory declaration or such other mode as the registrar shall consider satisfactory, primâ facie evidence of the title to the lands in question, for twenty years previously to such sale or other transaction, and of the same having for such twenty years been in the possession of the person by whom such sale or other such transaction shall have been made or effected, or some person or persons through whom he claims, and of the same being at the time of the application in the possession of the person applying to be registered in respect of such sale or other such transaction; and until such evidence shall have been produced the registrar shall not be bound to effect the registration applied for.

Discretion in registrar as to such evidence.

LXIII. Provided always, that if in any case the applicant for registration cannot for any reason show to the registrar such primâ facie evidence of title and possession as aforesaid, then such reason may be shown to the registrar together with all the circumstances which are considered to preclude such applicant for registration from complying with the direction contained in the last clause; and if the registrar shall be satisfied with the reason so assigned, and the statement of circumstances so made, and also satisfied that the applicant is proceeding bonâ fide in the matter of the registration, then the registrar shall proceed to effect the registration applied for.

Registered ownership to be subject to existing interests, easements, &c.

LXIV. The ownership first registered under this Act of any lands, upon the occasion of or for giving effect to any such sale, settlement, transfer, assurance, or transaction, other than as aforesaid, and the lands forming the subject of such registered ownership, shall (subject to the provisions herein-after contained with respect to the period of twenty years, and with respect to parliamentary title and warranted title, and the other provisions herein-after contained,) be

deemed and taken to be subject to all estates and interests, including all charges and leases, whether legal or equitable, created before or existing, or capable of arising or taking effect, in respect of such lands, at the time of such registration (other than an ownership, charge, or lease arising after the commencement of registration, and barely required to be registered, but not in fact registered under this Act), and also to all such easements, rights of common, fishery, and sporting, heriots, quitrents, and rentcharges in lieu of tithes, as are in the fifty-sixth section of this Act mentioned, and may at the time of such registration affect or be issuing out of or charged upon the lands forming the subject of such registered ownership, or any part thereof.

Remedies incident to existing interests preserved for twenty years.

LXV. If at the time of the first registration of any lands or the ownership thereof under this Act there shall be any estate, title, or interest, legal or equitable, to which, under the provisions herein-before contained, the registered ownership of such lands shall be subject, the person having or claiming any such estate or interest shall, subject to the provisions herein contained with reference to the period of twenty years, have and retain, notwithstanding such registration, all the same rights, powers, and remedies, according to the nature of his estate, title, or interest, for recovery of such lands or the possession or profits thereof, or a judgment, verdict, or decree establishing or giving effect to his title thereto or to any interest therein, as he would in such case have had or been entitled to if there had been no registration of the ownership of such lands under this Act, and if this Act had not passed.

Advertisement of the registration.

LXVI. Within fourteen days after the first registration of any lands or the ownership thereof shall have taken place under this Act, the registrar shall cause notice of the fact of such lands and the ownership thereof having been registered, particularizing shortly, but as clearly as may be, the lands so registered, and the name and addition of the person registered as the owner thereof, to be given by advertisement to be published in two successive weeks in some newspaper circulating in the county or district in which such lands may be situated, and also in the London Gazette, and the expenses attending such advertisements shall in each case be part of the costs of registration, and shall be paid as herein provided with regard to the costs of registration.

And with respect to lands held for long terms of years, and not in fee, be it enacted as follows:

Special registry for lands held for long terms of years.

LXVII. A special registry shall be opened for registering ownerships in those cases where lands shall at the time of the registration of the ownership thereof be held or possessed by persons beneficially, and not as trustees or mortgagees, for long terms of years (as terms of one hundred years or upwards), and where by reason of the rights of ownership practically residing in such termors it is not probable that any registration of the ownership of the fee of such lands can or will be effected under the provisions of this Act; and in every case of lands registered in such special registry the length or duration of the term for which the lands are claimed to be held, and, if practicable, the time of the commencement of such term, shall be stated or shall appear on the face of the register.

General provisions of the Act applicable thereto.

LXVIII. Such special registry, and the lands or ownerships registered therein, shall, so far as the difference in the circumstances will admit, be subject to provisions and regulations in all respects similar or corresponding to the provisions and regulations herein contained with reference to the general registration hereby established; but the registrar shall have full power and authority to frame and make such rules, and prescribe such forms, and adopt such regulations, for the purpose of adapting the provisions of this Act to the lands or ownerships which may be the subjects of such special registry; and all rules and regulations which shall be from time to time ordained by him for the purpose aforesaid shall be as valid and effectual as if contained in this Act.

And with respect to existing interests in lands the ownership whereof may be registered under this Act, be it enacted as follows:

Persons entitled to existing interests to assert or notify their right within

LXIX. Any person who at the time of the first registration of any lands under this Act shall have or be entitled to any estate, right, or interest in such lands, and to which, under the provisions herein-before contained, the registered

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twenty years after land first registered.

ownership of such lands shall be subject, shall assert or notify his right to the said lands or the estate or interest therein to which he may be entitled or which he may claim, and take such proceedings in that behalf, as herein-after mentioned, within twenty years next after such registration shall have taken place, and until the end of such term of twenty years the registered ownership of such lands shall, subject to the provisions herein-after contained, remain subject to such estate or interest of any such person, and to all claims and demands in respect thereof; but at the end of such term of twenty years such registered ownership shall, in respect of estates or interests created before or existing or capable of arising or taking effect at the time of such first registration, be subject only to such rights as shall then have been protected on the register, or notified to the registrar, or enforced against or claimed in respect of such lands, in some or one of the modes herein-after authorized or pointed out for that purpose: Provided always, that after the expiration of such term of twenty years, so long as the registered ownership of any lands shall not, subsequently to such expiration, be transferred to a new registered owner for a valuable consideration, and without fraud, and so long as no charge or lease affecting the same shall not subsequently to such expiration be registered under this Act, it shall be competent to a court of equity, upon the application of any person having any estate or interest in such lands created before or existing or capable of arising or taking effect at the time of such first registration as aforesaid, to grant an injunction restraining a transfer of the registered ownership of the lands in question, and the registration of any charge or lease of such lands under this Act, or to make such other decree or order touching the registered ownership as such court shall think fit; and further, if any charge or lease affecting the lands in question shall have been registered subsequently to the expiration of the said period of twenty years, but the registered ownership shall not have been transferred to a new registered owner for valuable consideration and without fraud, then such injunction as aforesaid may be granted or decree or order made, subject only to the charge or lease which shall so have been registered as aforesaid.

Proviso enabling court of equity to prevent sale by injunction in certain cases.

Power to owner of an existing interest to follow the purchase money where there has been a sale.

LXX. Any person who at the time of the first registration of any lands under this Act shall have or be entitled to any estate or interest in such lands, and to which, under the provisions herein-before contained, the registered ownership of such lands shall be subject, shall, in case such first registration shall have taken place upon the occasion of or for giving effect to a sale of such lands, and if not then on the occasion of the first registration (if any) which shall take place within the aforesaid period of twenty years, for carrying out or giving effect to a sale of such lands, and in case such sale shall not have been made expressly subject to such estate or interest, be entitled, if he shall think fit, to assert or claim satisfaction of his right in respect of such lands as against and out of the purchase money received upon such sale or the completion thereof, and against the person who effected such sale or received such purchase money.

What proceedings may be taken for protecting existing interests, within the twenty years.

LXXI. In any such case as in the sixty-ninth clause mentioned the person having any such estate, right, or interest as therein mentioned shall, in order to preserve such estate, right, or interest as against the registered ownership, and the effect of the registration thereof, under this Act, within twenty years after the first registration of the ownership of the lands affected by such estate, right, or interest, either obtain or recover or come into possession of such lands by virtue or in respect of such estate, right, or interest, or shall recover judgment in ejectment or some other action at law for or against such lands, by virtue or in respect of such estate, right, or interest, or shall obtain, or there shall be made in his favour, a judgment, decree, or order of a court of equity touching such lands, establishing, declaring, or giving effect to such estate, right, or interest, or shall notify to the registrar the nature and extent and particulars of such estate, right, or interest; and in case he shall within the said period of twenty years take some or one of the proceedings or do some or one of the Acts in this clause mentioned for preserving his estate, right, or interest as aforesaid, then and in every such case, and notwithstanding the expiration of such period of twenty years, the aforesaid registration of the ownership of such lands shall have no force, validity, or effect as against or to the prejudice of nor shall the same in any way impede such possession

or enjoyment as aforesaid, or the effect or operation of such judgment or verdict as aforesaid, or the execution of any process thereon or for giving effect thereto, or the operation or effect of any such decree, judgment, or order as aforesaid, or for the execution of any process thereon or for giving effect thereto, or otherwise, in the case of any such notification as aforesaid, the aforesaid registration of the ownership shall be and remain subject to the estate, right, or interest notified, after and notwithstanding the lapse of the said period of twenty years; and furthermore, in any and every such case the registrar shall or may, upon the application of the person so in possession or having recovered or obtained such judgment, verdict, decree, or order, or having made such notification, make such alteration in the registered ownership, or such memorandum or note in or on the register or any index thereof, as under the circumstances, and having regard to the nature or extent of the estate, right, or interest which shall so have been recovered in or asserted against or notified in respect of such lands, the registrar shall deem necessary to preserve consistency between the entry of the registered ownership and the possession or enjoyment, judgment, verdict, decree, or order, or notification, which shall so have been obtained, recovered, or made as aforesaid; and furthermore, the court of law or equity in or by which any such judgment, verdict, decree, or order shall have been made, obtained, or recovered as aforesaid shall have full power and authority, as part of its judgment or order touching the lands in question, to direct or order the registered ownership to be cancelled or altered, or the name of the person then appearing on the register as owner to be erased, or any other name to be added thereto, or to direct or order such registered owner to execute or make a grant to or in favour of the person who shall so have recovered judgment or verdict, or obtained the decree or order, and to give and make such other directions and orders touching the registered ownership, and the entries in the register relating to the lands in question, as such court of law or equity shall in the circumstances of the case deem necessary or just.

Requisite alterations to be made in the register where an existing interest is set up.

LXXII. Provided always, that in case, under the powers or authorities in the last clause contained, any alteration, variation, or addition in or to the registration of the ownership shall be made by the registrar, or be adjudged, directed, or ordered to be made by any court of law or equity, such alteration, variation, or addition shall be made or carried out on the register in such a form and mode of registration of the ownership of lands established by this Act, and the scheme and principle of such registration, as herein declared and set forth.

Extension of twenty years in cases of disability.

LXXIII. If at the time of the first registration of the ownership of any lands affected by any such estate, right, or interest as in the sixty-ninth section of this Act mentioned, or if at any time during the said period of twenty years, the person for the time being having or being entitled to such estate, right, or interest in such lands, shall be under any of the disabilities herein-after mentioned, (that is to say,) infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond seas, then such person, or the person claiming through him, may, notwithstanding the period of twenty years herein-before limited shall have expired, assert or notify his right to the said lands, or the estate or interest therein to which he may be entitled, or which he may claim, and take such proceedings in that behalf as are herein-before mentioned, within ten years next after the Time at which the person under disability as aforesaid shall have ceased to be under any such disability, or shall have died (which shall have first happened).

The extreme limit to be forty years.

LXXIV. Provided nevertheless, that no such proceeding as aforesaid shall be taken by any person who at any such time as aforesaid shall be under any of the disabilities herein-before mentioned, or by any person claiming through him, but within forty years next after such first registration as aforesaid shall have taken place, although the person under disability may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

No allowance for successive disabilities.

LXXV. Provided also, that when any person having any such estate, right, or interest as aforesaid shall be under any of the disabilities herein-before

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mentioned at any such time as aforesaid, and shall depart this life without having ceased to be under any such disability, no time to assert or notify such estate, right, or interest, or take any such proceeding as aforesaid, beyond the said period of twenty years next after such first registration as aforesaid, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

Periods of limitation not extended.

LXXVI. Nothing herein contained shall be deemed, taken, or construed to extend or enlarge the period of limitation at the termination of which, if this Act had not passed, the right or title of any person to any lands in respect of any such estate, right, or interest as in the said sixty-ninth section of this Act mentioned would be extinguished under the statutes passed for the limitation of actions and suits; but, on the contrary, it is the meaning of this Act that only so long as any such estate, right, or interest, if this Act were not passed, would not be extinguished under the said statutes, the person having any such estate, right, or interest shall be at liberty to assert or notify such estate, right, or interest, and take such proceedings in that behalf as herein-before mentioned, provided it be done within the time herein-before limited in that behalf.

What are existing interests within the meaning of the Act.

LXXVII. No estate, right, or interest in any lands, though created before or existing or capable of arising or taking effect in respect of such lands at the time of the first registration of such lands or the ownership thereof under this Act, shall be deemed to be an estate, right, or interest to which the registered ownership under the provisions aforesaid shall be subject, when the registered owner shall be a person who is trustee for the person having such estate, right, or interest, or a person named as registered owner by or with the concurrence of the person having such estate, right, or interest, or by or with the concurrence of the guardian or committee of such person, if an infant or of unsound mind, or the husband of such person if a married female, or named as registered owner by or under the authority of any instrument under which such estate, right, or interest as aforesaid may have arisen, or named as registered owner by any judge of a court of equity upon an application made to him for such purpose, and with which the person having such estate, right, or interest as aforesaid, or such guardian, committee, or husband as aforesaid, shall have been served (which application may be made to such judge at chambers in a summary way).

And with respect to the possession of lands not being consistent with or being adverse to the registered ownership, be it enacted as follows:

Adverse title by possession may operate against the registered ownership.

LXXVIII. Nothing in this Act contained shall be deemed, taken, or construed to give effect to the title conferred by registered ownership, or any transfer of the registered ownership, to the exclusion of any title adverse thereto or independent thereof of the person who for the time being may be in possession or in receipt of the rents and profits of the lands forming the subject of such registered ownership, nor shall the title of the registered owner be deemed or taken, by virtue or in respect merely of the ownership being registered in his name, to be paramount the title of the person in possession of the lands, where such possession is adverse to or independent of and not represented by the ownership of or vested in the registered owner, nor shall any registered owner, or any person dealing with or proposing to take a transfer from any registered owner, be exonerated from the effect of the possession of the lands forming the subject of the registered ownership, being (if the same in any case shall be) adverse to the registered ownership, or the title manifested or represented by such registered ownership.

Name of former registered owner to be taken off the register when adverse title gained.

LXXIX. When and so soon as the title of the registered owner, or the title manifested or represented by the ownership registered in his name, shall have become barred by a title gained by a possession adverse to or independent of and not represented by the registered ownership, then the registered owner shall not be at liberty to retain the registered ownership, or to remain on the register as registered owner, but he shall be bound to make a grant of the registered ownership of the lands in question to the person who shall so have gained a title by possession as aforesaid, or if he shall refuse so to do the registered ownership standing in his name shall be cancelled, upon the order of a judge of a court of equity being made to that effect: Provided always, that

nothing in this clause contained shall in any manner affect or concern any person who shall actually become registered owner by transfer from or under the before-mentioned registered owner so bound to make such grant as aforesaid, other than a person who shall become such registered owner or transferee without valuable consideration or by fraud.

How purchasers may protect themselves in dealing with the registered owner against the effect of the adverse possession.

LXXX. Nothing in the said and clauses contained shall be deemed or taken to affect any person taking or proposing to take a transfer from the registered owner of the lands of which he is the registered owner, with notice of or any obligation to inquire into or concern himself as to any deeds, wills, instruments of title, or documents, matters, or things by virtue or in respect whereof the person in possession may have or claim such possession, or may have or claim title to the lands in question, or of any trusts or equities which may be subsisting in his favour, as against the registered owner, as to the lands in question, or of the state of the title as between him and the registered owner, as to the lands in question, but it shall be sufficient if the person taking or proposing to take a transfer of the registered ownership from or dealing concerning the same with the registered owner shall in any such case as in this clause mentioned give notice in writing, through the register office (according to such rules and regulations as to service and otherwise as shall be made and prescribed by the registrar), to the person in possession or in receipt of the rents and profits of the lands forming the subject of the registered ownership, stating that he is about to take a transfer of the registered ownership of such lands from the registered owner (naming him), and that such transfer will be proceeded with and completed, unless, within fourteen days next after the service of such notice, the person to whom such notice shall be given shall obtain and serve an order by way of injunction to the contrary; and if in any such case, upon such notice being given, the person in possession or in receipt of the rents and profits of such lands shall not, within fourteen days next after the service of such notice, obtain and serve upon the person giving the same the order of a court of law or equity enjoining the registered owner from making, executing, or effecting any transfer of the registered ownership, or any transfer thereof other than such as shall be specified in such order, the transfer or proposed transfer of such registered ownership to the person giving such notice as aforesaid may be proceeded with and completed, and shall be effectual to pass and confer the title to the lands forming the subject thereof, according to the provisions of this Act touching the transfer of registered ownerships, as well against and so as to bind the person in possession or in receipt of the rents and profits as aforesaid, as all other persons whomsoever, and the possession of such person shall by such proceedings as aforesaid be taken to be ascertained and proved not adverse to or independent of the registered ownership, but, on the contrary, to be manifested and represented thereby, and bound by the transfer thereof, in like manner as if the registered owner had been or were in such case himself in possession or in receipt of the rents and profits.

Volunteers to be subject to the adverse possession.

LXXXI. Provided always, that any person who shall become registered owner by transfer without valuable consideration, or transferee of the registered ownership without valuable consideration, shall be subject, in any case in which the possession may be adverse to or independent of the registered ownership so transferred, to the right or title (whatever it may be) of the person having such possession; but this provision shall not extend or apply to any person subsequently becoming registered owner, or transferee of the registered ownership, unless he shall be also a transferee without valuable consideration or by fraud, claiming title immediately from such first-mentioned transferee.

And with respect to the transfer of the registered ownership, and the operation and effect of such transfer, be it enacted as follows:—

Transfer to take place by deed of grant, and cancelling former name, and entering grantee's name in register.

LXXXII. From the time of the first registration of any lands or the ownership thereof under this Act, the title to such lands, or the registered ownership thereof, both at law and in equity, shall pass and be transferred, except in the cases herein otherwise specially provided for, by a simple deed of grant of the lands forming the subject of the registered ownership, to be made or executed by the registered owner for the time being to the person proposed or intending to become transferee or registered owner in his place (and which deed of grant

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may be in the form set forth in schedule B. to this Act), or by a deed naming the proposed registered owner, as mentioned in the sixtieth section of this Act, and by cancelling the name of the registered owner making such grant or deed in the entry of the ownership of the lands included therein, and entering or placing the name of the transferree or person named in such grant or deed as owner of such lands upon the register of the same lands, in the place of the former registered owner, but such deed of grant or other deed as aforesaid shall not be entered on or referred to in the register.

Title deeds need not be delivered up.

LXXXIII. The title deeds of lands the ownership whereof may be registered under this Act may be retained by the persons holding or entitled to hold the same, and need not be delivered up to the registrar, or deposited at the register office.

Registered ownership, when transferred, to be free of all estates created since the first registration, except registered charges and leases, occupation leases, and easements.

LXXXIV. The title to any lands forming the subject of a registered ownership shall, upon the transfer of such registered ownership being effected upon the register by the entry of the name of the transferee or grantee as registered owner, in manner herein-before provided, vest or be taken to be vested in such new registered owner (notwithstanding any defect in the title arising subsequently to the time of the first registration of such lands or the ownership thereof, under this Act,) freed and absolutely discharged of and from all and all manner of prior estates, leases, rights, titles, interests, charges, incumbrances, claims, and demands whatsoever which may have been created or limited in or may have arisen in respect of such lands since or subsequently to the time of the first registration of such lands or the ownership thereof under this Act, and which but for this Act could or might be had, made, or set up in, to, out of, or upon or in respect of the same lands, or the registered or unregistered ownership thereof, by any person or persons whomsoever, or on any account whatsoever; save and except such charges as shall appear in the register or index of charges, and such leases as shall appear in the register or index of leases affecting such lands; and save and except such leases not exceeding twenty-one years, as herein-before mentioned; and save and except also such easements, rights of common, fishery, and sporting, heriots, quitrents, and rentcharges in lieu of tithes, as in the fifty-sixth section of this Act mentioned.

And with respect to mortgages and charges, and the registration thereof, and the effect of such registration, be it enacted as follows:—

Definition of charges.

LXXXV. Every mortgage, security for money, pledge, hypothecation, or charge affecting lands, and every rentcharge or chief rent or other perpetual rent or annuity (except heriots and quitrents, and all redeemed or purchased land tax), shall be deemed and taken to be charges, and comprised in the word "charge" or the word "charges," whenever the same is used in this Act, except where a contrary intention appears.

Option to register charges created before the passing of this Act.

LXXXVI. Every charge made of or created as to the fee of any lands before the passing of this Act, or after such passing and before the commencement of registration, or capable of arising as to such lands at the time of such commencement of registration, may either be registered or entered in the register of charges herein-after mentioned, or if not so registered or entered shall be deemed to be within and subject to the provisions in this Act contained with respect to the estates, rights, and interests herein-before referred to as "existing interests."

Charge prior to the first registration.

LXXXVII. Save as herein provided with respect to "existing interests," in the case of any such existing charge as aforesaid not being registered under this Act, and becoming subject to the aforesaid provisions as to existing interests, and save as herein provided with respect to charges registered under this Act, in the case of any such existing charge being so registered, no charge made or created before or capable of arising at the time of the commencement of registration in respect of any lands shall be prejudiced or affected by any of the provisions of this Act.

Powers incident to the charge to be deemed registered.

LXXXVIII. Every charge which shall be made after the commencement of registration, and which is hereby required to be registered, shall be registered in the register of charges herein-after mentioned; and all the powers and authorities incident, attached, or pertaining to such charge shall, by the registry

of the charge, be deemed and taken to be also registered; and no title or ownership, other than such charge, shall be registered in respect of any mortgage, unless and until the mortgagee shall obtain or be in possession of the lands comprised in the mortgage or some part thereof by virtue or in respect of such mortgage, or shall have foreclosed the equity of redemption of such lands or some part thereof.

All charges affecting the fee to be registered.

LXXXIX. Every charge of or upon lands which shall be made, take place, or arise after the commencement of registration, and which shall in terms extend to or include or be intended to extend to or include the fee or inheritance of or whole interest in such lands, or which shall not in terms be confined to an interest less than the fee or inheritance of or whole interest in such lands, shall depend for its efficacy upon the registration in the manner herein provided of the same charge or the particulars thereof; and every charge of or upon lands to the efficacy whereof such registration as aforesaid is hereby made necessary shall, so far as regards the lands included or intended to be included therein or affected or intended to be affected thereby, be void as against any person claiming any title or ownership to or of or charge on or lease of such lands which may subsequently be duly registered in the manner herein provided, unless such charge has been registered in the manner herein provided before the registration of such subsequently registered title or ownership, charge or lease.

Registered charge subject to existing interests and easements.

XC. Every such charge which shall be so registered, and the lands forming the subject of such registered charge, shall, subject to the provisions herein contained with respect to the period of twenty years, and with respect to parliamentary title and warranted title, and the other provisions herein contained, be deemed and taken to be subject to all estates and interests, including all charges and leases, whether legal or equitable, created before or existing or capable of arising or taking effect in respect of such lands at the time of the first registration under this Act of the ownership of such lands, or the registration of such charge (whichever shall first happen), other than any ownership, charge, or lease created subsequently to the commencement of registration, and hereby required to be registered, but not in fact registered, under this Act, and also to all such easements, rights of common, fishery, and sporting, heriots, quitrents, and rentcharges in lieu of tithes, as are in the fifty-sixth section of this Act mentioned, and may at the time of such registration affect or be issuing out of or charged upon the lands forming the subject of such registered charge or any part thereof.

What particulars of the charge to be entered on the register.

XCI. Every such charge so required to be registered as aforesaid shall be so registered or entered in the register as to show in the case of any mortgage or security for money, or pledge or hypothecation or charge, besides the name of the registered owner of the charge, the amount or sum of money secured or expressed to be secured or made payable thereby, and the rate of interest made payable thereon, and the date of the instrument or the time of the transaction or contract creating or containing the mortgage security, pledge, hypothecation, or charge, or under which the same repectively shall arise, and in the case of any rentcharge or chief rent, or other perpetual rent or annuity, or any redeemed or purchased land tax, besides the name of the registered owner of the same, the amount of the annual sum made payable by the instrument creating such rentcharge, chief rent, or annuity, or the annual amount of the land tax so redeemed or purchased, and the date of the instrument or the time of the transaction or contract creating the rentcharge, chief rent, rent, or annuity, or the right to the redeemed or purchased land tax, or under which the same respectively shall arise, but not, except where the registrar may for special reasons deem the same necessary, any other particulars.

General provisions of the Act as to registered ownerships applicable to registered charges.

XCII. All charges required to be registered by this Act shall be registered in the names of persons to be and remain registered owners of such charges respectively, for the purposes of this Act; and all the provisions herein contained touching the registered owners of lands, and the registered ownership of lands, and the qualities and incidents of such ownership, and the transfer of such registered ownerships, under this Act, and the effect thereof, shall (save where otherwise expressly provided) be deemed and taken to apply, as far as in the nature of the case may be, to the registered owners of charges, and

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the registered ownerships of charges, and the transfer of such registered ownerships.

Registrar to make rules for adapting the registry accordingly.

XCIII. The registrar general shall have full jurisdiction to prescribe such forms and lay down and frame such rules and regulations as he shall deem proper for the purpose of more fully carrying out the said last-mentioned provision, and for the purpose of adapting the regulations and machinery of the register office as herein set forth with reference to the registered ownership of lands to the registration of the ownership of charges.

Priorities of registered charges.

XCIV. The priorities of registered charges on lands, for the purposes of this Act, shall be determined and decided, as to all charges created, made, or arising after the commencement of registration, solely and exclusively by the order of the dates or times when such charges respectively shall be registered under this Act, and which dates or times shall be entered or stated in or shall appear on the register of such charges.

Charge unregistered may be part of unregistered ownership.

XCV. Notwithstanding the provisions herein-before contained for the registration of charges, any such charge as aforesaid which as to any lands shall be created or made or shall arise after the commencement of registration, and shall happen not to be registered as to such lands, may have effect as constituting or being the unregistered ownership, or part of the unregistered ownership of such lands; and in such case the same shall be subject to the provisions herein contained with regard to unregistered ownerships.

Evidence necessary to entitle a person to register a charge.

XCVI. In order to entitle a person to have a charge registered under this Act, either such charge shall be made by the registered owner, or the consent of the registered owner to the registration thereof shall be produced to the registrar, or the order or authority of a judge in quity for the registration of the same shall be obtained, or such evidence as the registrar shall deem necessary of the right to have the same registered shall be produced to the registrar.

With respect to the registration of leases, be it enacted as follows:

What leases to be registered.

XCVII. Every lease of lands, other than such leases as are mentioned in the fifty-sixth section of this Act, which shall be made after the commencement of registration, shall depend for its efficacy upon the registration in the manner herein provided of the same lease; and every lease to the efficacy whereof such registration as aforesaid is hereby made necessary shall, so far as regards the lands included or intended to be included therein, or affected or intended to be affected thereby, be void as against any person claiming any title or ownership to or of, or charge on or lease of, such lands which may subsequently be duly registered in the manner herein provided, unless such lease has been registered in the manner herein provided before the registration of such subsequently registered title or ownership, charge or lease.

To what they will be subject.

XCVIII. Every such lease which shall be so registered shall be taken to be subject and affected in like manner as charges registered under this Act are by the nineteenth section of this Act declared to be subject and affected.

What particulars to be entered on the register.

XCIX. Every such lease so required to be registered as aforesaid shall be so registered or entered in the register as to show, besides the name of the registered owner of the lease, the length or duration of the term of such lease, the date of the lease, and the amount of the rent or rents reserved thereby, but not, except where the registrar may for special reasons deem the same necessary, any other particulars.

General provisions as to registered ownership applicable to registered leases.

C. All leases required to be registered by this Act shall be registered in the names of persons to be and remain registered owners of such leases respectively for the purposes of this Act; and all the provisions herein contained touching the registered owners of lands, and the registered ownership of lands, and the qualities and incidents of such ownership, and the transfer of such registered ownerships, under this Act, and the effect thereof, shall (save where otherwise expressly provided) be deemed and taken to apply, as far as in the nature of the case may be, to the registered owners of leases, and the registered ownerships of leases, and the transfer of such registered ownerships.

CI. The registrar shall have full jurisdiction to prescribe such forms and lay down and frame such rules and regulations as he shall deem proper for the purpose of more fully carrying out the said last-mentioned provision, and for the purpose of adapting the regulations and machinery of the register office as herein set forth with reference to the registered ownership of lands to the registration of the ownership of leases.

Power to registrar to make rules.

CII. Notwithstanding the provisions herein-before contained for the registration of leases, any such lease as aforesaid which as to any lands shall be created or made after the commencement of registration, and shall happen not to be registered as to such lands, may have effect as unregistered ownership or part of the unregistered ownership of such lands; and in such case the same shall be subject to the provisions herein contained with regard to unregistered ownerships.

Unregistered lease may be part of unregistered ownership.

CIII. In order to entitle a person to have a lease registered under this Act, either such lease shall be made by the registered owner, or the consent of the registered owner to the registration thereof shall be produced to the registrar, or the order or authority of a judge in equity for the registration of the same shall be obtained, or such evidence as the registrar shall deem necessary of the right to have the same registered shall be produced to the registrar.

What evidence necessary to entitle a person to register a lease.

CIV. Notwithstanding the provisions herein-before contained requiring the date of the instrument creating a charge to appear on the register of the charge, and the date of the lease to appear on the register of the lease, no registered owner or person becoming registered owner of the lands affected by such charge or lease, and no transferee of such registered charge or lease, and no registered owner of any other charge or lease of or on the same lands, shall be deemed to be affected by notice of the instrument the date of which shall so appear on the register, or of any rights, interests, or equities affecting such registered charge or lease, other than the particulars of such charge or lease expressly stated in the registry thereof, pursuant to the provisions herein-before contained; nor shall the register of the ownership of the lands in question, or of charges or leases thereof, or of any transfers or transfer of the same respectively, or the effect of such transfers, under the other provisions herein contained, be in any manner prejudiced or affected by any equity, right, or title which, if this Act were not passed, would or might attach or be set up against or in respect of the lands in question, by reason or on the ground or in consequence of notice of any such instrument as aforesaid affecting any person interested in such lands.

Notice excluded, with regard to charges and leases.

And with respect to voluntary applications for the registration of the ownership of lands, be it enacted as follows:—

CV. Any owner of lands, and any tenant for life or other person having a limited interest in lands, who may be desirous of having the ownership of such lands registered under the provisions of this Act, may make application to the registrar for such registration; and such application shall contain such particulars and circumstances of the lands proposed to be registered, and of the estate or interest of the applicant, and the incumbrances (if any) affecting the lands, as in the judgment of the registrar may be requisite to enable him to form an opinion on the application; and if he shall accede thereto, the registrar may, if he shall consider it necessary, give directions for the investigation of the title to such lands to such an extent as the registrar shall deem sufficient for the purpose of registering the ownership of such lands; and when the registrar shall be in a position to act upon the application, he shall cause the applicant, if the apparent owner of the inheritance, and if not the apparent owner of the inheritance, but of a less interest, then the applicant and such other person as the registrar shall approve, to be registered as owner or joint owners (as the case may be) of the lands mentioned in such application.

Power to owner to apply to registrar for registration, and what to be done thereon.

CVI. The registrar, before authorizing the registration of the ownership of any lands, on the voluntary application of any person, may, if he shall see occasion, require notice to be given in such manner as he shall direct to the person next in remainder, reversion, or expectancy of an estate of inheritance in the lands in question, or to any other person to whom he may think notice ought to be given, and may hear and determine any objection which may be

Registrar may require notice of such application to be given to certain persons.

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made by the person so next in remainder, reversion, or expectancy, or other such person as aforesaid.

And with respect to the mode of registering lands or the ownership thereof under this Act, be it enacted as follows:

How ownership to be registered.

CVII. Lands and the ownership thereof shall be registered under this Act by an entry in the register of a particular description of the lands the ownership whereof is intended to be registered, and also an entry of the name and addition of the person becoming or intended to become or applying to be or directed to be entered as registered owner of the same, without any reference in such entry or in the register to the grant or conveyance under which such person shall have acquired a right to become registered owner, or which otherwise may have related to the transfer of lands, and without any other formality whatsoever; but the registrar shall endorse on the deed of grant or conveyance a memorandum of the fact of the registration of the ownership thereunder; and in the description of the lands so to be entered as aforesaid the situation, quantity, quality, boundaries, occupation, and mode of occupation of the lands shall be stated and set forth as fully as may be according to the circumstances; and such reference shall also be made therein by the registrar to the public map as herein-before in that behalf mentioned; and the registrar shall have at all times full power and authority to require the description of the lands to be stated and set forth by any party applying to become registered owner, or his solicitor or agent, in such form and manner and with such particulars as the registrar shall deem best fitted to fulfil the direction lastly herein-before contained.

Party registering to produce a map.

CVIII. No registration of any lands or the ownership thereof under this Act shall take place or be made without a verified map or plan of the lands proposed or intended to be registered, upon such scale, and a schedule or book of reference thereto, specifying such particulars, as the registrar shall by any general or special regulation require, being brought to the register office (for the purpose of being there deposited and filed) before or at the time of the application for the registration of such lands, and such map or plan shall in every case be referred to in the particular or description of the lands herein-before required to be entered in the register as well as the public map to which, as herein-before provided, a reference is to be made by the registrar in such particular or description.

Errors in the map may be corrected.

CIX. Accidental or clerical errors in any such map, schedule, or book of reference as aforesaid shall not invalidate the register of the ownership; and upon any error being represented, with the consent of the parties, and proved to the satisfaction of the registrar, he shall make such alterations, additions, or omissions as shall be proper for correcting the error, and shall also have power, if necessary, to substitute a new map, schedule, or book of reference instead of the erroneous one, and to deliver the erroneous one to the party who shall have deposited it, or his representative, or to cancel, mark, or otherwise to deal with the same as such registrar shall deem expedient.

Maps to be preserved in the office.

CX. All such maps or plans as pursuant to the one hundred and eighth clause shall be brought to the register office shall be preserved in such office, and filed, or formed into books, or otherwise kept, and shall be from time to time used or appropriated in such manner, and for such purposes, for facilitating registration under this Act, as the registrar shall think fit.

Separate head in the registry for each property.

CXI. Save where otherwise provided by the regulations to be made under this Act, every ownership which may be registered under this Act of lands which or the ownership whereof may already have been registered shall be registered under the same head, symbol, or denomination, or in the same place, in or part of the register, as such previous registry; but where such lands or the ownership thereof shall not already or previously have been registered under this Act, then such ownership shall be registered under a new head, symbol, or denomination, or in a new place in or part of the register.

On subdivision, new head in the registry to be opened.

CXII. Where a part only of the lands which or the ownership whereof shall have been registered under this Act shall be intended to be registered in the name of or transferred to a new registered owner, then such part of such lands and the ownership thereof shall be separated in the register, and carried to and

entered under a new head, symbol, or denomination, or entered in a new place in the register, and thenceforth the entries of ownership relating to the same part of such lands shall be made under the last-mentioned head, symbol, or denomination, or in the last-mentioned place in the register, and such references shall be made as the registrar shall think fit in or upon the register of the lands where the ownership thereof was registered prior to such separation of part thereof as aforesaid to the place in the register to which the entries relating to such part shall be carried as aforesaid, so that it may appear by means of such references what part of the lands forming the subject of the registration before the separation of a part thereof as aforesaid remain the subject of the ownership registered or appearing in that part of the register.

And with respect to conflicting claims, be it enacted as follows:

Registrar, by consent, may determine conflicting claims.

CXIII. In case there shall happen at any time to be conflicting claims by persons to be entered as registered owners of the same lands, or of lands in part the same, or in case any person shall apply to be registered owner of any lands or any part of any lands already forming the subject of registered ownership in the name of another person under this Act, then and in any such case the registrar shall have jurisdiction, upon the consent of the conflicting claimants, or upon the consent of the person claiming to be and the person who has already been registered as owner of the lands in question, to investigate, determine, and adjudicate upon any question or questions of title or of identity of property as between such persons in respect of the lands in question, to the end and intent that the ownership of the lands in question may be so entered on the register as that there may not be double or conflicting entries of ownership of the same lands or lands in part the same on the register, and in such case the ownership shall be registered or the registration already made of the ownership shall be altered conformably to the decision which shall so be come to by the registrar upon such question being submitted to his determination as aforesaid.

If no consent, he may require the parties to obtain judicial decision.

CXIV. If in any such case as in the last clause mentioned the conflicting claimants, or other such persons as therein mentioned, shall not agree to the registrar determining the question at issue between them, then and in such case the registrar shall have jurisdiction to direct and require such proceedings as he shall, under the circumstances, think fit to be taken by one or other of the parties in dispute, and by such one in particular as he shall name against the other of them, in such court and at such time as he shall deem fit, for the purpose of a determination being obtained of the question of title or identity, and to the end and intent that the ownership of the lands in question may be entered on the register conformably to the result of such determination, or in such manner as in the opinion of the registrar may best carry out the same; and in the meantime, and until such determination shall be had, the registrar shall be at liberty to suspend the registration of the ownership of the land in question, or to suspend the operation of any registration which may have been already made of the ownership thereof.

Jurisdiction of registrar in such cases.

CXV. It shall be lawful for the registrar, by summons under the seal of his office, to require the attendance before him, for the purposes of any such inquiry, direction, or proceeding as in the one hundred and thirteenth and one hundred and fourteenth sections of this Act mentioned, of such persons as he shall think fit to examine in relation to any such inquiry, direction, or proceeding, and to require all such persons to produce before him all deeds, books, papers, documents, and writings relating thereto, and to examine upon oath or upon affirmation or declaration (as the case may require) all persons who shall attend under any such summons, and all persons who shall voluntarily attend before him as witnesses; and it shall be lawful for the registrar to administer such oath, affirmation, or declaration; and every person required by any such summons to attend before the registrar, who, without reasonable cause, to be allowed by the registrar, shall fail to appear according to the tenor of such summons, or shall refuse to be sworn or make affirmation or declaration, as the case may be, or shall not make answer to all such questions as shall be lawfully put to him by the registrar, or shall refuse or fail to produce before the registrar any such deed, book, paper, document, or writing, being in or under his custody, possession, or power, as shall be lawfully required to be produced by him before the

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registrar, shall, for such default of appearance, refusal to be sworn or to make affirmation or declaration, or for not answering any such question as aforesaid, or not producing such deed, book, paper, document, or writing, incur and be liable to all such penalties, prosecutions, actions, and suits as a person might incur or be liable to for failing to appear or refusing to be sworn or to give evidence in any suit or matter depending in the High Court of Chancery: Provided always, that the register may, where he shall think fit, receive in evidence affidavits; provided also, that in relation to every such inquiry, direction, or proceeding the registrar shall have full power and discretion as to the giving or withholding costs and expenses, and as to the persons by whom the same shall be paid or borne.

No tenancy in common in registered ownership.

CXVI. Any two or more persons may jointly be registered owners under this Act of the same lands, but there shall not in any case be a tenancy in common of the registered ownership, and the same shall in all such cases be a joint tenancy, save and except that it shall be lawful, in any case of there being two or more joint registered owners, to enter or register them as registered owners without survivorship, by adding the words "no survivorship" to the entry of their names in the register as owners of the lands in question; and whenever such words shall so be added or entered the registered ownership shall not survive upon or by the death of one of the registered owners to the other of them, and the surviving registered owner shall not be deemed the sole owner or the sole registered owner, but upon any subsequent change in or transfer of the registered ownership the ownership of the lands shall be deemed to have been transmitted to and shall be traced through and a grant of the lands shall be necessary from as well the representatives of the deceased registered owner as also the surviving registered owner or his representatives.

Registered owner to allow his name to be used by person interested in the unregistered ownership.

CXVII. In every case where there shall be an unregistered ownership of any lands, the registered owner of such lands shall, on the application of any beneficiary or person interested in the unregistered ownership, be bound to allow his name to be used by such beneficiary or person in any action, suit, or proceeding which it may be necessary or proper to bring or institute in his name touching the lands forming the subject of such registered ownership, or for the protection, benefit, or advantage of the title represented by or vested in such registered owner, or the interest of any such beneficiary or person as aforesaid; but nevertheless such registered owner shall in any such case be entitled to be indemnified in like manner as if, being a trustee, he would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such action, suit, or proceeding by his cestuique trust.

Provision for cases of existing trusts for buying land, and conveying same to uses.

CXVIII. In every case where by any Act of Parliament, settlement, or deed, or otherwise, any trustee or other person is or shall be or shall have become bound or empowered to purchase or procure lands, and take a conveyance thereof, to uses or upon trusts or in any other special manner, or where any trust money or other funds is or shall be or shall have become subject to be laid out in the purchase of lands which when purchased are directed to be or ought to be conveyed to uses or upon trusts or in any other special manner, it shall be sufficient, upon the purchase of any such lands under any such trust or power, or with reference to the taking or procuring a conveyance thereof when purchased, to vest such lands in the trustee or person purchasing the same as registered owner of such lands, according to the provisions of this Act, and such uses or trusts, and any special provisions touching or which otherwise might affect the lands so purchased or vested, shall thereupon constitute or become and be part of the unregistered ownership of such lands, or shall affect or become and be provisions affecting the unregistered ownership of such lands; and such unregistered ownership shall have the benefit of and be subject to the provisions herein contained touching unregistered ownerships.

And with respect to the transmission of the ownership or estate of deceased registered owners and of registered owners becoming bankrupt or insolvent, be it enacted as follows:

A real representative.

CXIX. There shall for the purposes of this Act be a real representative of deceased registered owners, which real representative shall, after the decease of

the person whose real representative he is, be registered or entered as registered owner of the lands of which the deceased person whose real representative he is was registered owner.

The executor to be such.

CXX. In every case where an executor shall be named in and shall act under the will of a deceased registered owner, such executor shall be the real representative of such deceased person for the purposes of this Act.

Where no executor, a real representative to be appointed by a judge.

CXXI. In any case where a deceased registered owner shall not have left a will, or shall not in his will have appointed an executor, or having appointed an executor the executor so appointed shall renounce probate of such will, or shall not, within one calendar month after the death of the deceased person, prove or apply for a grant of probate of such will, then and in every such case such person shall be the real representative of the deceased registered owner as upon a summary application to be made for the purpose to a judge in equity (which application may be made at chambers) shall be named or appointed by such judge to be the real representative of the deceased registered owner.

Minutes of proceedings to be sent by testamentary and bankrupt and insolvent courts to the registrar.

CXXII. Every court having jurisdiction in matters testamentary, and every district or branch connected therewith, and every court or district court of bankruptcy, and every court for the relief of insolvent debtors, and every court exercising jurisdiction in matters of bankruptcy or insolvency, or the judge of such court, or such officer of any such court as the judge thereof shall for this purpose appoint, shall from time to time transmit or cause to be transmitted to the registrar a memorandum or minute of every grant or probate of any will to any executor, and of every grant or letters of administration which shall be made or issued by or out of the court having jurisdiction in matters testamentary as aforesaid, or any such district or branch court as aforesaid, and of the petition for an adjudication in bankruptcy against any trader, and of the nomination or appointment of the official and creditors, assignees of any bankrupt, and of the nomination or appointment of the provisional and creditors' assignees of any insolvent debtor, and of any vesting order made or granted of the estate and effects of any insolvent debtor; and all and every such memorandums or minutes which may be so transmitted as aforesaid shall be preserved in the register office, and entries thereof or with reference thereto shall be from time to time made in books to be kept for the purpose in the register office.

Petitioning creditor may register his affidavit as an inhibition.

CXXIII. Any creditor who has made an affidavit in support of a petition presented or intended to be presented for an adjudication in bankruptcy may register such affidavit as an inhibition against the transfer or charging of any lands of which the debtor against whom the petition is presented or intended to be presented may be registered owner; and the registrar may, upon a memorandum or minute of any such petition, or of any vesting order in insolvency, being transmitted to him by such court or officer as aforesaid, register such petition or vesting order as an inhibition in like manner; and every such affidavit, petition, and vesting order so registered as an inhibition shall be deemed to be an inhibition within the meaning of and subject to the provisions herein-after contained with reference to inhibitions.

No relation back to act of bankruptcy.

CXXIV. No transfer by a bankrupt of the registered ownership of lands effected on the register under this Act before the advertisement in the London Gazette of the adjudication of bankruptcy against such bankrupt shall be invalidated by reason of such adjudication, or of the act of bankruptcy on which such adjudication is founded, or of any other act of bankruptcy, unless such affidavit or petition as aforesaid shall have been registered under this Act before the registration of such transfer of the registered ownership.

Registered ownership not to pass immediately to bankrupt's or insolvent's assignees.

CXXV. Lands of which a person becoming bankrupt, or an uncertificated bankrupt, shall be or become registered owner, shall not pass to or vest in the assignees of such bankrupt by virtue or in consequence merely of the appointment of such assignees, nor shall lands of which an insolvent debtor shall be or become registered owner pass to or vest in the assignees in the insolvency by virtue or in consequence merely of the vesting or other order, or the nomination, appointment, or choice of assignees in such insolvency; but if within the space of two calendar months next after the adjudication in bankruptcy, or the vesting order in insolvency, or next after the registry of the ownership

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in the name of the bankrupt or insolvent, (which shall last happen,) there shall be any order of the court of bankruptcy or the court for relief of insolvent debtors (as the case may be) directing the registrar to transfer the registered ownership to the assignees under the bankruptcy or insolvency, then such transfer shall be made to such assignees accordingly; and if within such space of two calendar months there shall not be any such order as aforesaid, or if during that period the assignees under the bankruptcy or insolvency shall by writing under their hands disclaim the lands of which the bankrupt or insolvent is the registered owner, then, after the expiration of such two calendar months, or after the giving of such written disclaimer, the registrar may effect any transfer of the registered ownership of the lands in question which if there had been no such bankruptcy or insolvency might have taken place or have been effected in regard to such lands.

Saving of rights in cases of bankruptcy and insolvency.

CXXVI. Provided always, That nothing herein contained shall alter or vary the position of the assignees of any bankrupt or insolvent as between such assignees and any persons who may be beneficially interested in the lands of which the bankrupt or insolvent is registered owner, but that the rights of such persons (if any) as between them and such assignees, in respect of the lands of which the bankrupt or insolvent is the registered owner, shall remain entirely unaffected, notwithstanding any transfer of the registered ownership of such lands to the said assignees, without prejudice, nevertheless, to the provisions herein contained with reference to the effect of transfers of the registered ownership in case of a transfer being made by the said assignees of such registered ownership as aforesaid.

And with respect to a parliamentary title to lands the ownership whereof may be registered under this Act, be it enacted as follows:

An owner may petition for a judicial sale.

CXXVII. Upon the application by petition of any owner of or person for the time being in receipt of the rents of any lands in possession, the court of Chancery may, if it shall think fit, due regard being had to the interests of all parties appearing to be interested in such lands, order or authorize the sale of such lands and the fee simple thereof; and if any order for sale of such lands shall be made on any such application, the title to such lands shall be investigated in such manner as the said court shall direct; and if the party applying for such sale shall neglect or fail to make out a title to such lands to the satisfaction of the said court, the purchase money payable in respect of such lands shall be paid into the Bank, in the name and with the privity of the accountant general of the said court, to be placed to his account there in such manner or to the credit of such parties as the said court shall direct, but subject to the control and disposition of the said court; and upon such payment being made, and upon the purchaser being registered as the owner of such lands under this Act, such purchaser shall be deemed and adjudged to be entitled to the lands which shall be so purchased by him, and, notwithstanding any defect in the title to the said lands, freed and absolutely discharged of and from all and all manner of prior estates, rights, interests, charges, incumbrances, claims, and demands (if any) which can or may be had, made, or set up in or upon or in respect of the same lands by any person or on any account whatever, except such rights and interests as in the fifty-sixth section of this Act mentioned, and except such estates, rights, interests, charges, claims, and demands as in or by any order of the said court relating to such sale shall be excepted.

Further provision in that case.

CXXVIII. If upon any such application as in the last clause mentioned the court of Chancery shall have ordered or authorized the sale of any lands, and upon the investigation of the title to such lands the party applying for such sale shall make out a title to such lands to the satisfaction of the said court, then and in such case the court may order the purchase money payable in respect of such lands to be paid to the person applying for such sale, or to such person and in such manner as the court shall direct; and upon such purchase money being so paid, and upon the purchaser being registered as the owner of such lands, such purchaser shall be deemed and adjudged to be entitled to the lands which shall be so purchased by him, and notwithstanding any defect in the title to the said lands, freed and absolutely discharged of and from all and all manner of prior estates, rights, interests, charges, incum-

brances, claims, and demands (if any) which can or may be had, made, or set up in or upon or in respect of the same lands by any person or on any account whatever, except such rights as in the fifty-sixth clause of this Act mentioned, and also except such estates, rights, interests, charges, claims, and demands as in or by any order of the said court relating to such sale shall be excepted.

Person who has contracted to sell, may have the sale carried out by the court.

CXXIX. Any person who may be solely entitled to or any two or more persons who may together be entitled to the beneficial interest in any lands in fee simple in possession, and who shall have bonâ fide contracted with some person for the absolute sale thereof with a parliamentary title, may apply to the court of Chancery for an order confirming such sale, and for an investigation of the title of such person or persons to such lands; and if the court shall think fit to make any such order upon any such application, the title to such lands shall be investigated in such manner as the said court shall direct; and if the party or parties applying for such order shall make out a title to such lands to the satisfaction of the said court, then and in such case the court may order the purchase money payable in respect of such lands to be paid to the said party or parties or otherwise in such manner as the said court shall direct, or if the party or parties applying for such order shall neglect or fail to make out a title to such lands to the satisfaction of the said court, the purchase money payable in respect of such lands shall be paid into the Bank, in like manner as in the one hundred and twenty-seventh section of this Act mentioned, and upon such purchase money being so paid, and upon the purchaser being registered as the owner of such lands, such purchaser shall be deemed and adjudged to be entitled to the lands which shall be so purchased by him, and notwithstanding any defect in the title to the said lands, freed and absolutely discharged of and from all manner of prior estates, rights, interests, charges, incumbrances, claims, and demands (if any) which can or may be had, made, or set up in or upon or in respect of the same lands by any person or on any account whatever, except such rights as in the fifty-sixth clause of this Act mentioned, and also except such estates, rights, interests, charges, claims, and demands as in or by any order of the said court relating to such sale shall be excepted.

Discharge of incumbrances by the court out of the proceeds of the sale.

CXXX. In exercising the powers in the said one hundred and twenty-seventh and one hundred and twenty-ninth sections of this Act contained, it shall be lawful for the said court to sell any lands discharged from any charges or incumbrances which it may be enabled, and may, with the consent of the person applying, think fit to purchase or redeem, and in any such case the court shall out of the money arising from the sale, and in preference to all other payments thereout, pay the consideration for the purchase of or for paying off or redeeming such charges or incumbrances; and it shall be lawful for the court, where it thinks fit, to pay to any person entitled to any annual or other charge, who may consent to accept the same, a gross sum in discharge or by way of redemption thereof or of a part thereof, and where part only of any lands subject to any incumbrance or charge is sold to charge the part not sold with such incumbrance, or an apportioned part thereof, in exoneration of the money arising from the sale, and to enable or authorize persons to release the money arising from the part so sold from any incumbrance or charge, or to relinquish their claim on such money in respect thereof, without impairing or affecting such incumbrance or charge as to the remaining part of the lands originally charged; and the court, where it shall think fit, may invest or provide for the investment of money to meet any annual or periodical charge, or any other charge, incumbrance, or interest, where by reason of such charge, incumbrance, or interest being contingent or otherwise it shall appear to the court proper or expedient so to do, and otherwise may make such orders and directions for applying the money arising from any sale in such manner as will secure the convenient application thereof for the benefit and according to the rights of the parties interested in the lands or part thereof from the sale of which the same shall have arisen.

Provision for certain cases of partial discharge and incumbrances.

CXXXI. No payment under the one hundred and thirtieth section of this Act, towards discharge of what shall be due on any incumbrance or charge not being payment in full, shall prejudice or affect any right or remedy of the incumbrancer or person entitled to the charge in respect of the balance, otherwise than as against the lands or part thereof sold under the direction of the

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said court; and no payment under the said one hundred and thirtieth section in respect of any incumbrance or charge shall impair any right or equity of any persons out of whose estate such payment shall be made to be reimbursed or indemnified by any person or out of any other lands or estate, except so far as the court under any special circumstances shall order.

What may be done where the money is not immediately distributable.

CXXXII. Where any money arising from a sale under the one hundred and twenty-seventh and one hundred and twenty-ninth sections of this Act, or either of them, is not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the court shall think it expedient for the protection of the rights and interests therein, the court may by its order declare the trusts affecting such money, or the stocks, funds, or securities in which it shall be invested, as far as it has ascertained the same; and the said court may make such orders and give such directions in relation to any such monies, stocks, funds, or securities as such court might make or give in relation to any trust monies, stocks, or securities paid in, transferred, or deposited under the Act passed in the eleventh year of Her Majesty, "For "better securing trust funds, and for the relief of trustees."

Apportionment of tenant's rents in cases of judicial sales.

CXXXIII. If any land to be sold under the direction of the said court shall be subject to a lease for years or lives comprising other land at an entire rent, it shall be lawful for the said court to apportion the rent between the lands to be sold and the remainder of the lands subject to such rent; and the said court shall direct notices of any such intended apportionment as aforesaid to be given to such persons and in such manner as it shall think fit, and shall hear such parties as shall apply to the said court in relation thereto; and after such apportionment, and after the sale shall be completed, the owners of the reversion in the respective lands shall have the like remedies for the apportioned rents against the lands out of which the same shall be payable and the owners and occupiers thereof respectively as were subsisting for the entire rent before such apportionment; and all the covenants, conditions, and agreements of every lease, except as to the amount of rent to be paid, shall, as regards the apportioned parts, remain in force, in the same manner as they would have done in case no such apportionment had taken place.

Costs.

CXXXIV. In every proceeding under the one hundred and twenty-seventh and other sections of this Act relating to the sale of lands by or under the direction of the court of Chancery, the said court shall have full power and discretion as to the giving or withholding costs and expenses, and as to the persons by whom and the funds out of which the same shall in the first instance or ultimately be paid, repaid, and borne, and shall and may apportion the same amongst such parties and in respect of interest, rents, or income and principal, or corpus as the said court shall see fit.

Power to court to make general rules and orders.

CXXXV. The said court shall from time to time make such general rules and orders as it may think best adapted for regulating the course of procedure under the said one hundred and twenty-seventh and other sections of this Act relating to the sale of lands by or under the direction of the said court, and for securing the prompt and due distribution and payment of the monies received upon any such sales, amongst or for the benefit of the persons entitled thereto, and for the protection in respect of such monies of the interests of persons under disability, and of future interests, and generally for securing the due execution of the powers vested in the said court under this Act, and giving effect to the provisions and objects of this Act; but no fees or sums shall, under any such general rule or otherwise, be payable to any officers or persons upon or in respect of any inspection or search of any papers, records, or proceedings relating to any order for sale which may be made or applied for, or other matter pending or done under the said one hundred and twenty-seventh and other sections, or the production of any such papers or proceedings for the purposes of inspection or search, save in respect of any copy or extract of or from any order, document, or proceeding actually required and taken by any party, such sum not exceeding three halfpence for every ninety words, as shall be paid for the making of such copy or extract, and the court shall authorize to be charged to such party for the same.

Such orders to be laid before Parliament.

CXXXVI. All such general rules as shall be made as aforesaid shall be laid before both houses of Parliament within one calendar month from the making

thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within one calendar month from the commencement of the then next session of Parliament.

General jurisdiction of the court extended to cases of judicial sales.

CXXXVII. The said court shall have the like power, jurisdiction, and authority for enforcing the attendance of persons summoned, for punishing persons failing to appear, or refusing to be sworn or to make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders by the said court in relation to the matters to be inquired into and done by the said court under the said one hundred and twenty-seventh and other sections of this Act relating to the sale of lands as aforesaid, as are by law vested in the court of Chancery for such purposes in relation to any suit or matter depending in such court.

And with respect to warranted titles to or ownerships or lands, be it enacted as follows:

The machinery for obtaining a registered ownership, with warranty.

CXXXVIII. The registered owner of any lands, and any person applying or proposing to have the ownership of any lands registered under this Act, shall be at liberty to apply for the registration of the ownership of such lands as a warranted ownership, or as ownership with a warranted title.

The same.

CXXXIX. A warranted ownership or title shall as to the lands forming the subject thereof be deemed an ownership or title secure from eviction or disturbance or any adverse claim in respect of any estate, right, or interest created or limited before or capable of arising at the time of the registration of the ownership of the lands in question as a warranted ownership under this Act.

The same.

CXL. A warranted ownership may be registered or obtained under this Act in manner herein provided, either generally, unqualifiedly, and without exception, or qualifiedly and with the exception of any particular estates, rights, titles, interests, charges, incumbrances, claims, and demands which may be specified or excepted in the certificate or memorandum of warranty, of in the entry of the warranted ownership herein-after mentioned.

The same.

CXLI. In the case of any ownership being registered under this Act as a warranted ownership or as an ownership with warranted title, the clauses and provisions herein-before contained with reference to the estates, rights, and interests created or limited before or capable of arising as to any lands before or at the time of the first registration of such lands or the ownership thereof under this Act, and with reference to the position of any person having any such estate, right, or interest, and the position of the registered owner as regards such estate, right, or interest, shall be deemed and taken not to have any application to such registered ownership with warranted title, save and except as to such particular estates, rights, titles, interests, charges, incumbrances, claims and demands, (if any,) as may be excepted or specified by way of exception in the certificate or memorandum of warrantry or entry of warranted ownership herein-before referred to.

The same.

CXLII. Every warranted ownership, or every registered ownership with warranty, and the lands forming the subject thereof, shall, as well as every other registered ownership under this Act, be deemed and taken to be subject to such easements, rights of common, fishery, and sporting, heriots, quitrents, and rentcharges in lieu of tithes, as are in the fifty-sixth section of this Act mentioned, and may be for the time being or from time to time existing over or upon or affecting or issuing out of the lands forming the subject of such registered ownership, and to the possession under any such lease, not exceeding twenty-one years, as in the same section mentioned; and the warranty shall not extend or apply to any such rights or possession as in this clause mentioned or referred to.

The same.

CXLIII. The register shall frame, and cause to be printed and circulated as he shall see occasion, forms indicating the particulars to be stated or furnished to the registrar by persons proposing or applying to register the ownership of lands with warranted title under the provisions of this Act, and also such other forms as the registrar may deem requisite or expedient for facilitating the investigation of the title of the lands in question, under the direction of the registrar, as herein-after mentioned.

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The same. CXLIV. Any person claiming or applying to have the ownership of lands warranted shall, according to the forms which shall be framed and circulated by the registrar as aforesaid, state and furnish the particulars therein required to be stated or furnished, and also deliver to the registrar an abstract of his title to the lands the ownership of which he claims to have registered as a warranted ownership.

The same. CXLV. The abstract so to be delivered shall be such an abstract of the title as the person applying ought by the rules of the courts of equity to deliver to a purchaser under any contract for sale entered into by such person requiring the vendor to deliver an abstract of his title.

The same. CXLVI. Besides making such application and delivering such abstract as aforesaid, the person applying for a warranted ownership shall pay to or deposit with the registrar such a sum of money as the registrar shall estimate to be sufficient to pay the expenses of and incident to the investigation of the title to the lands proposed to be registered with warranted ownership; and if it shall afterwards appear to the registrar that such sum is insufficient to defray the whole of such expenses, then such person shall pay or deposit such further sum from time to time as the registrar shall direct in that behalf; and if the sum deposited shall eventually prove more than sufficient for the purpose in question, the excess shall be returned to the person applying and depositing such money.

The same. CXLVII. After such payment or deposit shall have been made, and such other matters and things as aforesaid shall have been done, the registrar shall proceed to have the title to the lands mentioned in the application investigated by a competent counsel and solicitor, to be approved by the registrar for the purpose; and the principle on which such investigation shall be conducted shall be to investigate or examine such title in such manner and to require it to be so made out as would be advised or required in such case by a counsel and solicitor acting on behalf of a trustee proposing to advance or lend trust money on the security of a mortgage of the lands mentioned in the application.

The same. CXLVIII. The registrar shall, if he shall see occasion, frame and prescribe rules to be observed in the course of and as to the various details pertaining to the investigation of any title upon any such application for a warranted ownership as aforesaid, and in particular rules as to the counsel's requisitions on and objections to the title, the answers or replies thereto, the examination of the abstract with the abstracted documents, the production of evidence in pursuance of counsel's requisitions, and the proof to be given by the solicitor of the performance by him of the duties pertaining to and arising out of the investigation of the title by him as such solicitor as aforesaid.

The same. CXLIX. The state of the title to the lands mentioned in such application, and the result of the aforesaid investigation thereof, shall be stated or certified by such counsel as aforesaid to the registrar after such title shall have been investigated in manner aforesaid, and after such matters and things shall have been done as such counsel or such solicitor as aforesaid shall have required, for the purpose of satisfying any inquiries or answering any objections relating to or arising on the title; or otherwise such statement or certificate shall be made, after such of the said matters and things shall have been done and completed, as the person applying for the warranted ownership can or ought, in the circumstances of the case, in the opinion of such counsel as aforesaid, to be reasonably required to do and complete.

The same. CL. The opinion of such counsel as aforesaid shall be stated whether, as the result of such investigation of the title as aforesaid, there is any estate, right, title, interest, charge, incumbrance, claim, or demand (ascertained or not ascertained, or merely possible or otherwise,) affecting the lands mentioned in the application, or any part thereof, which in his opinion ought to prevent the acceptance of the title by the registrar, or ought to be excepted from any warranty of the title or ownership of such lands which may be granted by the registrar in pursuance of this Act.

The same. CLI. If the person applying for the warranted ownership shall upon any point or as to any matter affecting the title object to any opinion, statement, or certificate which may be given or made by such counsel as aforesaid, he

shall be at liberty to appeal in a summary way from such opinion, statement, or certificate to any judge of a court of equity, by whom the matter or question in issue shall be heard and determined; and such regulations shall be made touching such appeals from time to time as the registrar, with the consent of the Lord Chancellor and one of the Vice-Chancellors of the said court for the time being, shall direct.

The same.

CLII. If, after the investigation of the title to the lands mentioned in any such application shall have been concluded in manner aforesaid, the registrar, by and with the advice of such counsel as aforesaid, shall think fit to register the ownership of the person so applying as aforesaid, or any other ownership in respect of such lands, as a warranted ownership under this Act, and if the person so applying shall be desirous or willing to have the ownership of such lands registered as a warranted ownership, with such exception or exceptions, or qualification or qualifications, (if any,) and in such manner as the registrar, by and with such advice as aforesaid, shall determine on, then the ownership of the lands mentioned in the application shall or may be registered in the name of the person so applying, or any person whom he shall appoint, or such person as the registrar, by and with such advice as aforesaid, shall deem proper, subject to and upon and after payment by such person to the registrar of such a sum by way of premium as by any general rule or regulation to be made from time to time by the registrar, with the consent of the Lord Chancellor and one of the Vice-Chancellors as aforesaid, shall be required to be paid by way of premium on the registration of a warranted ownership under this Act.

The same.

CLIII. Such premium shall be a sum to be calculated by way of a per-centage upon the estimated value of the lands proposed to be registered with warranted ownership; but, notwithstanding any such general regulation as aforesaid, the registrar shall have authority, under special circumstances, or in any case which shall seem to him to justify it, to require the payment of any larger amount or per-centage than the amount or per-centage fixed by any such general regulation as aforesaid.

The same.

CLIV. Upon the ownership of any lands being registered under this Act as a warranted ownership, the registered owner of such land shall be deemed and adjudged to be seised and possessed of such lands (notwithstanding any defect in the title of or to the said lands) freed and absolutely discharged of and from all and all manner of estates, rights, titles, interests, charges, incumbrances, claims, and demands which at any time before the registration of the ownership of such lands as a warranted ownership under this Act may have been created, limited, or made, or which at the time of such registration may have been capable of arising in, to, out of, or upon or in respect of the same lands, and which could or might be had, made, or set up, in, to, out of, or upon or in respect of such lands, by any person or persons whomsoever, save and except such rights as in the fifty-sixth clause of this Act mentioned, and save and except the estates, rights, titles, interests, charges, incumbrances, claims, and demands (if any) subject to which or with the exception of which the registrar shall have accepted such title as aforesaid, and which excepted interests shall be specified in a certificate of the warranted ownership which shall be signed by the registrar and delivered to the registered owner, and a copy of which shall be preserved in the register office, and entered in a book to be kept for entering copies of certificates of warranted ownerships registered under this Act.

If a claimant appears and establishes his claim compensation to be made to him.

CLV. In case there shall be any estate, right, or interest limited or created before or capable of arising at the time of the registration of any lands under this Act with warranted ownership, affecting the same lands or any of them, other than any such right as in the said fifty-sixth clause of this Act mentioned, and other than any interest, claim, or demand which shall be excepted from the certificate of warranty as aforesaid, and other than any estate, right, or interest which, by the operation of any of the provisions of this Act, would not affect such ownership if the same had been registered without warranty, and if any person shall, within ten years next after such estate, right, or interest shall by law or equity accrue to or become vested in him or her in possession, or, being a feme covert, or person within the age of twenty-one years, or out of the realm, or not of whole mind, at the time of such estate, right, or interest accruing as aforesaid, shall within ten years next after he or she shall respectively come and be

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discovert, at the full age of twenty-one years, out of prison, within this land, or of whole mind, make out and establish a claim in respect of such estate, right, or interest to the satisfaction of the registrar, then and in such case the registrar shall make or cause to be made to every such person a fair and reasonable compensation or satisfaction for every such claim so made out and established as aforesaid.

The same.

CLVI. Such sums as shall be paid by way of premiums for or upon the registration of warranted ownerships as aforesaid shall from time to time be paid into the receipt of the Exchequer, and be carried to and made part of the consolidated fund of the United Kingdom.

The same.

CLVII. In any case in which any sum of money shall become payable by way of compensation or satisfaction for any such right or claim as in the said one hundred and fifty-fifth clause of this Act mentioned, such sum of money shall be paid to the person becoming entitled to the same, his executors or administrators, out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Owners of limited interests may apply for parliamentary title or warranted ownership.

CLVIII. The aforesaid power of applying for and obtaining an investigation of the title to the fee of any lands under this Act, with a view to such title being warranted under this Act, and the aforesaid power of applying for and obtaining a judicial sale of any lands in fee with parliamentary title as aforesaid, may be acted upon and put in force by any person who in reference to the lands in question shall come within the definition or description of an owner of such lands, according to the definition of the term "owner" herein-before contained; but the court, if it shall think fit, or the registrar, if he shall think fit, as the case may be, may require notice to be given in such manner as shall be directed in that behalf to the person next in remainder, reversion, or expectancy of an estate of inheritance in the lands in question, or to any other person to whom the court or the registrar may think notice ought to be given, and may hear and determine any objection which may be made by the person so next in remainder, reversion, or expectancy, or other such person as aforesaid.

Power in such cases to charge the inheritance with the expenses.

CLIX. It shall be lawful for every owner of an estate in lands less in the whole than an immediate estate of fee simple or fee tail, or which shall be settled upon any trusts, with the consent of the registrar, and in such manner as he may direct, to charge so much of the expenses of any such survey and mapping as herein-before mentioned as is to be defrayed by him, or any part thereof, and to charge the expenses of any registration of the ownership of any such lands under this Act, and to charge the expenses of any registration of any such lands with warranted ownership under this Act, and interest on such expenses respectively after the rate of four pounds for one hundred pounds, upon the lands of which he is the owner, and which shall be so surveyed and mapped or registered as aforesaid, or upon any other lands holden by him by the same title or subject to the same trusts as the lands in respect of which such expenses were incurred.

What public notice to be given of aplications for parliamentary title or warranted ownership.

CLX. In the case of any petition or application for a judicial sale of lands with a parliamentary title or for an investigation of the title to any lands with a view to the same being warranted under this Act, no such order shall be made and no such proceedings taken as herein-before in that behalf mentioned for or with a view to the investigation of the title to the lands in question upon any such petition or application until such notices by advertisement in two public newspapers issued and circulating in the county in which the lands in question shall be situate, and in the "London Gazette," as the court or the registrar, as the case may be, shall direct, shall have been given of such petition or application, and two calendar months shall have elapsed from the publication of the last of such advertisements.

Disabling acts.

And with respect to inhibitions, disabling Acts, and caveats, be it enacted as follows:

CLXI. Any registered owner or person entitled to grant the right to the registered ownership of any lands may require to be placed on or entered in the register an entry in respect of the same lands or any part thereof, which entry may be termed a disabling act, and the object of which disabling act shall be to prevent any alineation, transfer, or charge of the registered ownership of

such land which may be inconsistent with the provisions of any settlement which may have been made of the unregistered ownership of such lands by the person placing or entering such disabling act on the register, or any other person; but no such disabling act shall be notice of any settlement or any of the provisions thereof, or shall affect any person becoming transferee of the registered ownership for valuable consideration, otherwise than by preventing any transfer of such ownership while such disabling act remains on the register.

Further provisions as to disabling acts.

CLXII. Any such disabling act may be framed so as to inhibit a transfer or charge either for an absolute term of years, not being more than twenty-one years, or for the lives of particular persons living, or during the lives of particular persons, without the consent of such persons, or for their lives and any term of years afterwards, not being more than twenty-one years, or for any other term, or during any other period not exceeding as aforesaid, or under any other conditions as to consents, and in any other manner which shall be conformable to law, and framed and specified in such manner as the registrar shall approve.

The same.

CLXIII. Forms of such disabling acts shall be prepared by the registrar, and issued and circulated, with explanations for using the same, in such manner as he shall think fit.

The same.

CLXIV. No transfer or charge of the lands to which any such disabling act shall refer, and with reference to which the same shall be entered on the register, shall be permitted by the registrar to be made of or upon the registered ownership of such lands while the disabling act shall remain on the register, or during the period mentioned therein, otherwise than with the consent and conformably to the conditions specified in the disabling act, but the registrar alone shall be charged with seeing that such consent is given or such conditions observed; and no transfer of or charge on the registered ownership which he shall actually permit to take place shall be prejudiced or affected by such disabling act, or any breach of the terms or direction thereof.

The same.

CLXV. The disabling act shall be removed from the register or cancelled at the expiration of the time or upon the happening of the event during or until which the same is by the terms thereof limited to endure or continue, and the same may also be removed from the register or cancelled by the order of any court of equity, to be obtained in a summary way, upon its being shown to such court that there is not any longer any interest under or provision in the settlement with reference to which the disabling act was originally entered inconsistent with or which ought to prevent a sale or charge of the lands in question, or a transfer or charge of the registered ownership of such lands, or any particular transfer or charge of the same which may be proposed or intended to be made, and which in any such order may be mentioned or referred to, or upon any other valid ground being shown to the court for removing or cancelling such disabling act.

A copy of a settlement may, in certain cases, be deposited with the registrar privately.

CLXVI. Whensoever any settlement, deed, will, or other instrument concerning any lands which or the ownership whereof shall be entered upon the register shall have been executed after the date of the registration of such ownership, and shall have come into operation, and whenever, in the opinion of the registrar, a suitable efficient or disabling act cannot, under the circumstances of the case, be framed or entered for the purpose of preventing a dealing with the lands forming the subject of such settlement, deed, will, or instrument, contrary to the provisions of the same, it shall be lawful for the registered owner to deliver a copy of such instrument to the registrar, to be filed in the said office, with a notice to the registrar that no transfer of the registered ownership of such lands is to be effected unless he is satisfied that the same is made with the consent of all the persons interested for the time being under such instrument, or with the consent of any specified individuals or class of persons interested thereunder; and it shall be the duty of the registrar to comply with the requisitions of such notice, but he shall not be liable for any error or omission in so doing, unless the same be fraudulent or wilful, nor shall the rights incident to any such transfer of the registered ownership, as herein-tofore provided, be in any manner affected by the deposit of any such copy of such instrument: Provided always, that nothing in this section contained shall

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prevent any person interested under such instrument entering an inhibition with respect to the transfer of the registered ownership of such lands, should he so think fit, under the provisions herein-after contained for entering inhibitions.

Inhibitions.

CLXVII. Where any person is or claims to be interested in the unregistered ownership of any lands declared or created or arising after the commencement of registration under this Act, and affecting any lands the ownership whereof may be registered under this Act, any person being or claiming to be so interested as aforesaid, or where any person being or claiming to be so interested is under any legal disability, then the husband, guardian, or committee, or any person acting for the purposes of this provision as next friend of the person so under disability, may, on behalf of such person, by requisition in writing under the hand of the person making such requisition, delivered at the register office, together with such affidavit as herein-after mentioned, require an inhibition in respect of any such lands, to be mentioned in such requisition, to be entered against the registered owner of such lands, inhibiting him from transferring or charging the registered ownership of such lands; and such requisition shall mention some convenient office or place situate within ten miles of the register office at which service of any notice by or on behalf of the registrar shall be deemed good service on the person signing such requisition; and the affidavit to be delivered with such requisition shall be made by the person signing such requisition, and such person shall therein swear that he believes that he is interested in the lands mentioned in such requisition or the unregistered ownership thereof, or where such requisition is on behalf of a person under disability then that the deponent believes that the person in such affidavit mentioned is so interested, and is under some disability therein specified, and may be prejudicially affected unless the inhibition be entered; and all requisitions for inhibitions shall, together with the respective affidavits delivered therewith, be from time to time made up into books or parcels, and numbered, the affidavit delivered with each requisition being numbered with the same number as the requisition.

Further prohibitions as to inhibitions.

CLXVIII. Where an inhibition is so required to be entered an entry refering to the requisition shall be made in the margin of or under some head refering to the register of the ownership of the lands mentioned in such requisition, and such entry shall be deemed an entry of an inhibitions in the terms of such requisition.

The same.

CLXIX. Any registered owner against whom an inhibition may be entered as aforesaid, or any person interested in the unregistered ownership of the lands to which the same relates, may by writing signed by such person, and lodged at the register office, require the registrar to cancel the entry of such inhibition; and the registrar shall within two days after the reeeipt of such writing give notice thereof to the person on whose requisition the inhibition was entered, and shall state in such notice that on the expiration of one calendar month after the service thereof the inhibition will be cancelled, and at the expiration of the same period of one calendar month the registrar, unless sooner restrained by the order of the court of Chancery, as herein-after mentioned, shall cancel the entry of the said inhibition.

The same.

CLXX. It shall be lawful for the court of Chancery, upon the application of any party interested, by motion or petition in a summary way, without bill filed, to restrain the registrar from cancelling the entry of any inhibition entered under this Act; provided always, that the court of Chancery shall have full power, upon the application of any party, to discharge or vary such order, and to award such costs on such application as such court may see fit, and generally to make such order in relation to the premises as to the same court may seem fit.

The same.

CLXXI. Any inhibition which may be entered under the provisions herein-before contained may be cancelled by the registrar, upon its being shown to him that the estate, interest, or charge of the party on whose requisition the inhibition was entered has ceased, or that such estate, interest, or charge is not an estate, interest, or charge in respect of which he would be entitled in equity to prevent a sale or charge of the lands in question by the person entered as registered owner of such lands, or any transfer or charge of such registered ownership, or any particular transfer or charge of such registered ownership which may at the time be proposed or intended to be made.

CLXXII. No transfer of or charge on the registered ownership shall be permitted by the registrar to be made by any person against whom any inhibition is entered as aforesaid of any lands in relation to which such inhibition is entered, after the entry of such inhibition, and before such entry is cancelled or removed. The same.

CLXXIII. After the commencement of registration under this Act, any registered owner may, by a requisition in writing under his hand, delivered at the register office, require a caveat against his own acts to be entered in respect of any lands registered in his name, to be mentioned in such requisition, in favour of any person described therein; and the requisitions for caveats shall from time to time be made up into books or parcels, and numbered. Caveats.

CLXXIV. Where a caveat is so required to be entered, an entry thereof or referring thereto shall be made in the margin of the register of the ownership of the lands mentioned in the said requisition for a caveat, or under some head referring to such register, and every such caveat shall remain in force for the term of six calendar months after the entering thereof, and no longer, unless such term be extended, as herein-after mentioned; and the person on whose requisition such caveat has been entered may by like requisition at any time during the original or any extended term thereof require the same to be extended for a further term of three calendar months; and in every such case an entry of such extension shall be made in the same manner and under the same head as and in connexion with the original entry in reference to such caveat; and such caveat shall remain in force for a further term of three calendar months from the expiration of the original or extended term, as the case may be, subsisting at the time of such requisition for extension. Further provisions as to caveats.

CLXXV. Where a caveat is duly entered under this Act as to any lands, every person claiming for valuable consideration under any transfer of the registered ownership of the same lands to be made by the person by whom the entry of the caveat has been required, or any person claiming under him, to or with the concurrence of the person in whose favour the caveat was so entered, or his heirs, executors, administrators, or assigns, and registered in the manner directed by this Act, while such caveat remains in force shall be entitled to the same preference, protection, and advantage, under the provisions of this Act, as if such transfer of such registered ownership had been made and registered at the time of entering the caveat; provided always, that no such caveat shall have any force or effect as against the operation of the bankruptcy or insolvency of the person requiring the same to be entered, or any act under such bankruptcy or insolvency. The same.

CLXXVI. The registrar shall cause the entries required to be made on registering or entering any inhibition, caveat, or other matter under this Act to be made immediately after the requisition or other document to be left or deposited on entering such inhibition, caveat, or other matter is received at the register office, and shall cause to be marked on all such requisitions and documents the day and time on and at which the same are respectively received in such office.

And with respect to setting up false or pretended titles, be it enacted as follows:

CLXXVII. If after the commencement of registration any person, not being the true owner nor in possession, shall set up or put forth or pretend to have a title or right to any lands, or any interest therein, falsely or fraudulently, and for the purpose of being or with any view of being or attempt to be registered as the owner thereof, or for the purpose or with any view of procuring the ownership thereof to be registered or having the same registered in his name or in the name of another not being the owner nor a person in possession, or if any person shall wilfully misrepresent at the register office the nature of his estate in any lands proposed to be registered, or shall produce at or take to the register office or cause or procure to be produced at or taken to the register office any forged or fictitious deed of grant or conveyance of lands, or evidence reating to lands, for the purpose of the same being used as or being represented or treated as conferring upon or showing him to have a title to such lands or an interest therein, or if any person shall in any other manner falsely Putting forth false, fictitious, or fraulent titles, deeds, &c., made a misdemeanor.

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or fraudulently procure himself to be registered as the owner of any lands or procure a false or fictitious title to lands to be registered under this Act, then and in every such case every such person so acting shall be deemed to be guilty of a misdemeanor, and upon being convicted thereof shall be liable to

A contract to sell lands already sold to another.

CLXXVIII. If any person having lands shall, after having sold or contracted to sell such lands to any person, and having received directly or indirectly the purchase money payable by such person for such lands, or any part thereof not less than one half, shall knowingly or consciously proceed to sell or contract for the sale of or shall knowingly or consciously in fact sell or contract for the sale of the same lands or any part thereof to another person, concealing from or not disclosing to such other person the fact of the said first-mentioned sale or contract, then and in every such case the person so acting shall be deemed to be guilty of a misdemeanor, and upon being thereof convicted shall be liable to

A purchase of lands by one knowing they are already sold to another.

CLXXIX. If any person knowing or having reason to believe that another person has purchased or contracted to purchase lands from the owner of or any person having power to sell the same, and that such other person has paid directly or indirectly any part of the purchase money payable by him for such lands, shall afterwards proceed to purchase or contract for the purchase of or shall in fact purchase or contract to purchase the same lands or any part thereof, without the consent of such other person, and shall become the registered owner of such lands, or procure the ownership thereof to be registered in his name, then such person so acting shall be deemed and taken to have committed a fraud upon the said other person to whom such lands shall have been so first sold or contracted to be sold as aforesaid, and his title and registered ownership shall be impeachable by such other person for fraud accordingly; and, furthermore, he shall be answerable in an action for damages at the suit of the person so defrauded.

As to obtaining the production of deeds necessary for effecting registration.

CLXXX. Any person having any interest, legal or equitable, in any lands by this Act authorized to be registered, the ownership of which has not been registered, or where any person having such interest is under any legal disability, then the husband, guardian, or committee, or any person acting for the purposes of this provision as next friend of the person under disability, may on behalf of such person require any person in possession of the title deeds or documents of title to such lands to produce the same (if and when necessary) at or to the register office, for the purpose of the ownership of such lands being registered under and according to the provisions of this Act; and in case the person in whose possession any such deeds or documents shall be refuse so to do, it shall be lawful for any judge of any of the courts of law or equity, upon a summary application, to make such order respecting the production of such deeds and documents, or copies thereof, at or to the register office, as to such judge in the exercise of his discretion shall under the circumstances of the case appear proper: Provided always, that this enactment shall not authorize any person so interested, or any person on his behalf, to require or enforce the production of any title deeds or documents by any mortgagee who holds the same as a security for money unpaid, nor in case any agreement or provision shall have been made for the non-registration of such ownership by the person so interested, or by any person from or through whom he derives his interest in the lands in question.

General power to the registrar to make regulations as to various matters.

CLXXXI. It shall be lawful for the registrar to control or interfere with the discretion of landowners in the disposition of their lands, or the objects or purposes of their dispositions of the same; but it shall be lawful for the registrar general from time to time to make such regulations as to him may seem proper for and in relation to all or any of the matters herein-after mentioned; viz.

The preserving a proper connexion between the registration of the ownership of any lands and the registration of any charge or lease affecting the same lands:

The identity or identification of the descriptions of lands in registering the ownership thereof, and registering charges or leases thereon:

The evidence to be required of the creation or existence of charges proposed to be registered under this Act, and of the nonpayment or nonsatisfaction of such charges from time to time:

The mode of cancelling the registry of a charge on the extinguishment thereof, and the evidence to be required of such extinguishment:

The determining the cases in which ownerships are to be indexed in the indexes under new heads and existing heads respectively, and the heads under which ownerships are to be indexed in such indexes, and in what cases of ownerships indexed references shall be made under any head in any such index to any other head in such index or any other index, and providing generally for the convenient classification and arrangement under heads in the indexes of the ownerships to be indexed therein, and the names of the registered owners, and the convenient arrangement of the indexes kept in the register office, as may in the opinion of the registrar tend to render searches easy and safe:

The particulars to be entered in the indexes to be kept in the register office where entries are required to be registered under this Act, and the form and manner of such entries.

The requiring statements to be made and brought to the register office for directing or regulating the entries to be made on registering lands or entering any inhibition, caveat, or other matter under this Act, and for affording information for the making of such entries, and as to the form of such statements, and requiring that the same shall be signed by the persons respectively requiring the registration or entry, and shall contain the addresses of such persons respectively, and determining and directing whether and in what cases such statements shall be written in or endorsed on the documents to be deposited as aforesaid, or written on separate papers:

The correction of errors and supplying of omissions in entries made under this Act:

The issue of certificates of registration in substitution for like certificates which may have been lost or destroyed:

The making of searches of and providing and issuing extracts from the indexes to be kept at the register office, and granting negative or other certificates with reference thereto:

Theforms of requisition for copies, extracts, or searches and the giving of receipts for documents received at the register office, the mode in which and the restrictions and conditions under which searches of the indexes kept at the said office, and inspection of documents deposited there, shall be permitted:

And generally for regulating all other matters and things whatsoever connected with the regulation and management of the register office, and the execution of this Act, not specially hereby provided for:

And from time to time to alter, vary, or revoke any such regulations, and make any regulations in relation to the matters aforesaid; provided that all regulations to be made by the said registrar under this Act shall be submitted to the Lord Chancellor and two other of the judges of the courts of equity for approval; and no such regulation shall take effect until the same has been approved by the Lord Chancellor and two of such judges; and all regulations to be made under this Act by the registrar with such approval as aforesaid shall be published in the London Gazette, and a copy thereof shall be sent to the clerk of the peace for every county in England, and such clerk of the peace shall retain such copy, and permit such persons to inspect the same, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided by the Act of the session holden in the seventh year of King William the Fourth and the first year of Her Majesty, chapter eighty-three, and such regulations, approved as aforesaid, shall also be laid before both Houses of Parliament within fourteen days after the same have been approved as aforesaid, if Parliament be sitting, but if Parliament be not sitting then within fourteen days after the next meeting thereof.

Registrar to make a report to the Lord Chancellor.

CLXXXIII. The registrar shall within one month after the commencement of registration under this Act send to the Lord Chancellor a report of the districts formed under this Act, and of all other acts and matters done by the

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registrar preparatory to such commencement of registration, and shall also in the month of January in every year send to the Lord Chancellor a general report of his proceedings under this Act, and of the business of the register office, and shall specify in such report whether any and what difficulties have arisen in or in relation to registration under this Act, or the searches required to be made or otherwise in the operation of this Act, or any regulations made thereunder, and whether any and what alterations have been suggested which appear to him expedient, or have occurred to him, and whether the same can or cannot be effected without the aid of Parliament, and may in such report make such observations or suggestions in relation to the matters aforesaid as the registrars may think fit; and every such report shall be laid before both houses of Parliament within one month after the receipt thereof by the Lord Chancellor, if Parliament be sitting, or if Parliament be not sitting, then within fourteen days after the next meeting of Parliament.

How notice to be given.

CLXXXIII. All notices by this Act directed to be given by advertisement shall be given by an advertisement to be inserted in some newspaper or newspapers printed and usually circulated in the county in which the lands to which such notices shall relate shall be situate, and in the London Gazette.

Certificates of registration may be issued.

CLXXXIV. Subject to such regulations as may be from time to time made under this Act, the registrar shall, upon the application of any registered owner of lands under this Act, issue to such person a certificate of such registration, and shall thereupon enter in an index to be kept for the purpose a memorandum of such certificate; and the registrar shall, upon such certificate being delivered at the register office for that purpose, cancel the same, and enter in the said index a note of such cancellation; and no grant or matter executed by the person by whom such certificate is issued affecting the laws to which such certificate relates shall entitle any other person to be registered as owner of such lands until such certificate has been cancelled; and such certificate may be deposited by way of mortgage or charge of the land mentioned therein by the person to whom the same has been issued, and any deposit thereof so made shall have the like effect as a charge of the lands to which the same certificate relates, but it shall be necessary to register a charge made by deposit of such certificate in the manner herein provided with respect to the register of charges.

The jurisdiction of equity preserved for various purposes.

CLXXXV. Nothing herein contained (save as herein otherwise expressly provided, or save as may arise from the operation of any of the provisions herein contained,) shall exclude the jurisdiction of any court of equity as to or for any of the following purposes, matters, or things; that is to say, the prohibiting by injunction the transfer of the registered ownership of any lands; the prohibiting by injunction the registration of any particular person as the owner or registered owner of any lands; the decreeing or ordering the registered ownership of any lands to be cancelled for fraud or otherwise; the decreeing or ordering the execution of a grant by any registered owner of the right to the registered ownership of any lands to any other person; the decreeing or ordering the execution of a grant by a person having the right under this Act to the registered ownership of lands, of such right to any other person; or the decreeing the specific performance of any contract for the sale of the registered ownership of any lands; but nothing in this clause or in this Act contained, with reference to the jurisdiction of a court of equity, shall prejudice the effect, operation, virtue, or validity of any transfer of the original ownership of any lands umder the provisions herein-before contained, or authorize any such court to invalidate any such transfer valid under such provisions, notwithstanding the same transfer might otherwise have been liable to be prohibited or prevented, or such registered ownership might otherwise have been liable to be cancelled or varied or affected, in respect of such jurisdiction of courts of equity as aforesaid, if such registered ownership shall at the time of any such transfer not actually have been decreed or ordered to be cancelled, prohibited from being transferred, or otherwise made the subject of any such decree or order, as in this clause mentioned.

Exemption from stamp duty.

CLXXXVI. All memorials and copies to be registered pursuant to this Act, and all copies and extracts of or from any of the documents to be depo-

sited in the register office, and all extracts from any of the indexes to be kept at the register office, and all certificates of the result of searches in the said indexes, shall be exempt from stamp duty.

Liberty of inspection.

CLXXXVII. Subject to such regulations as may be from time to time made under this Act, any person, on application at the register office, shall, at such times as may be limited by the registrar in this behalf, be allowed to inspect and search any of the indexes to be kept at the register office under this Act, and to examine and inspect any of the documents to be deposited in the register office under this Act, and to take extracts from any such indexes or documents as aforesaid; and the registrar shall, upon the delivery of any such requisitions as under such regulations may be required, and in accordance with such regulations, make or cause to be made such searches in any such indexes, and give such negative or other certificates of the result of such searches, as by such regulations may be directed in this behalf; and every such certificate shall be sealed with the seal of the register office, and signed by the registrar or an assistant registrar of the register office.

Correction of errors in the register.

CLXXXVIII. It shall be lawful for the registrar (subject to any regulations to be made under this Act), upon such evidence as may appear to him sufficient in this behalf, to correct errors in entries made and supply entries omitted to be made under this Act; provided always, that in the correction of any such entry he shall not erase or render illegible the original entry, and shall on correcting or supplying any entry cause an entry to be made in connexion with the entry so corrected or supplied; and every correction made and omission supplied under this provision shall be as effectual as if made at the time when the original entry was made, or, in the case of an omitted entry, as if made at the time when the same ought to have been made, but not so as to effect any assurance registered or act done previously to the actual time of the correction of the entry or supplying the omitted entry.

Fees for registry, &c.

CLXXXIX. It shall be lawful for the Commissioners of Her Majesty's Treasury to fix the fees to be taken in the register office in respect of documents to be registered, entries to be made, searches, certificates, office copies, and other matters to be done in such office under this Act, and from time to time to vary or wholly abolish auy such fees and fix new fees.

No fees to be charged in certain cases.

CXC. Provided always, that no fee shall be taken (save where herein otherwise specially provided) in the register office on the registration of any ownership or transfer of the registered ownership on the sale or agreement for the sale of lands where the purchase or consideration money expressed therein does not exceed two hundred pounds, or on the registration of any charge where the sum or amount thereby secured does not exceed two hundred pounds, or on the registration of any lease without fine or premium at a yearly rent under twenty pounds, or in consideration of a fine or premium not exceeding two hundred pounds without any yearly rent, or with yearly rent under twenty pounds.

Fixing the fees of solicitors in those cases.

CXCI. It shall be lawful for the Lord Chancellor and two of the judges of the courts of equity, from time to time, by orders to be issued by them for this purpose, to regulate the charges of attornies and solicitors in relation to all acts for or preparatory or in relation to the registration of ownerships exempted as aforesaid from fees or registration under this Act; and every such order shall be published as the Lord Chancellor and judges making such order shall direct.

Perjury.

CXCII. If any person making any affidavit or statutory declaration under this Act, or for any of the purposes thereof, shall therein wilfully swear falsely, such person shall be deemed guilty of wilful and corrupt perjury.

Forgery, &c.

CXCIII. If any person shall forge, counterfeit, or imitate, or cause or procure to be forged, counterfeited, or imitated, or knowingly act or assist in forging, counterfeiting, or imitating, upon any document upon which the seal of the register office is authorized to be impressed the impression or any part

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of the impression of the seal of the register office, or shall knowingly stamp or mark, or cause or procure to be stamped or marked, or knowingly act or assist in stamping or marking, any such document with any forged or counterfeit seal of the register office, with the intent to defraud any person whomsoever, or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly act or assist in forging or counterfeiting, the name, signature, or handwriting of any officer of the register office in any case in which the signature of such officer is authorized to be made, or shall forge or counterfeit or cause or procure to be forged or counterfeited, or knowingly act or assist in forging or counterfeiting, the name, signature, or handwriting of any person whomsoever to any instrument which is in and by this Act, or shall by the exercise of any power contained in this Act, be required or directed to be signed by such person, or shall, with an intention to defraud any person whomsoever, use any document upon which any impression or part of the impression of any seal of the register office shall have been forged, counterfeited, or imitated, knowing the same to be forged, counterfeited, or imitated, or any document the signature of which shall be so forged or counterfeited as aforesaid, knowing the same to be forged or counterfeited, every such person so offending shall be guilty of felony, and shall upon conviction be liable to be punished as provided by the seventeenth section of the Act of Victoria, chapter ninety-nine, in the case of a person convicted of forging the seal, stamp, or signature of any document in that Act mentioned or referred to; and the provisions of the said section of the said Act concerning the custody of any document admitted in evidence by virtue of the said Act, and with respect to the county, district, or place in which every person charged with committing any felony under the said Act, and every accessory before or after the fact to any such offence, may be dealt with, indicted, tried, and sentenced, and the respective offence of every such person and accessory laid and charged to have been committed, shall extend and be applicable to any document admitted in evidence under this Act, and to every person charged with committing any felony under this enactment, and to every accessory before or after the fact to any such offence, and to the respective offence of every such person and accessory.

Mistakes of officers.

CXCIV. Every action which shall be brought by any person to recover damages for or by reason of any loss or damage occasioned by any omission, mistake, or misfeasance of any officer of the register office, shall be brought against the registrar as the nominal defendant, and the venue of every such action shall be laid in the county of Middlesex; and in case in any such action the plaintiff recover final judgment against such nominal defendant, then upon the prayer of such plaintiff the Lord Chief Justice or Lord Chief Baron, as the case may be, of the court where such action shall have been brought, shall and he is hereby directed to certify to the Commissioners of Her Majesty's Treasury the fact of such judgment having been recovered, and the amount of damages and costs recovered; and thereupon, or before the expiration of two calendar months after such judgment is so certified, the amount of such damages and costs shall be paid to the person recovering the same, his executors or administrators, out of the consolidated fund of the United Kingdom of Great Britain and Ireland; provided always, that notice in writing of every such action and of the cause thereof shall be served upon Her Majesty's Attorney General for the time being, and also upon the registrar for the time being, one calendar month at least before the commencement of such action; provided also, that no registrar, nor the real or personal estate of any registrar, shall be in any way chargeable with or upon any judgment recovered as aforesaid, nor shall any process or notice in or relating to any such action (except as aforesaid) be served upon the registrar, but all such processes and notices shall be served upon Her Majesty's Attorney General for the time being.

Costs of action for mistake.

CXCV. If in any such action judgment be given in favour of the nominal defendant, or the plaintiff discontinue or become nonsuit, the plaintiff shall be liable to pay the full costs of defending such action; and the same (when taxed) shall be levied in the name of the nominal defendant by the like process of execution as in other actions on the case.

Writ of error.

CXCVI. If at any time before payment to the plaintiff of any damages recovered by any such judgment as aforesaid a writ of error be brought upon such judgment, such damages shall not be paid until the judgment is affirmed; and if, after payment to the plaintiff of any damages recovered by any such judgment as aforesaid, such judgment be reversed, the court by which such judgment is reversed shall, on the prayer of Her Majesty's Attorney General, award a writ of restitution against the plaintiff, in the name of the nominal defendant; and when the monies thereby directed to be levied, or any part thereof, are brought into court, the said court shall order the same to be paid into Her Majesty's Exchequer, to be carried to the account of the consolidated fund of Great Britain and Ireland.

Compromise of claims against the register office.

CXCVII. It shall be lawful for the registrar, with the consent of the Commissioners of Her Majesty's Treasury, to enter into and conclude a compromise with any person claiming a right of action by reason of any loss or damage occasioned by any omission, mistake, or misfeasance of any officer of the register office; and any sum of money which shall be agreed to be paid upon any such compromise shall be paid out of the consolidated fund of Great Britain and Ireland, and upon payment thereof the person receiving the same shall execute to the registrar a release of the cause of action in respect of which such payment is made; and such release may be pleaded in bar to any action which the person executing the same, or any person claiming under him, shall bring to recover damages for or by reason of any loss or damage occasioned by the same omission, mistake, or misfeasance.

Limitation of actions for mistake.

CXCVIII. The time which by the Act passed in the twenty-first year of His late Majesty King James the First, chapter sixteen, is limited for commencing or suing actions, shall, so far as respects any action brought in the manner directed by this Act to recover damages for any loss or damage arising from any omission, mistake, or misfeasance of any officer of the register office, be computed and run from the time when actual loss or damage has arisen from such omission, mistake, or misfeasance as aforesaid.

As to the closing of the local register offices.

CXCIX. It shall be lawful for the Lord Chancellor, Master of the Rolls, and two of the judges of the superior courts of law at Westminster, by an advertisement or advertisements to be published in the London Gazette, to appoint a time or times not earlier than six calendar months after the publication of such advertisement for the closing of the register offices for the west and north ridings of the county of York, the east riding of the said county, and the town and county of the town of Kingston-upon-Hull, and the county of Middlesex respectively; but no vacancy which shall occur after the passing of this Act in the office of registrar for the west or north riding of the county of York, or the east riding of the county of York, and the town and county of the town of Kingston-upon-Hull shall be filled up, and such offices shall be respectively discontinued after the deaths, surrenders, or forfeitures respectively of the present registrars; and after the time appointed for the closing of the register office of the county of Middlesex the offices of registrars for such county shall cease and determine.

Further provision as to the same.

CC. In case the offices of registrar for the west and north ridings of the county of York and the east riding of the county of York and the town and county of the town of Kingston-upon-Hull, or any one or more of such offices, become vacant before the time appointed for the closing of the register office for such respective county or place, the Commissioners of Her Majesty's Treasury shall from time to time appoint some proper person or persons to execute the duties of the vacant office until the said closing of such register office; and every person to be so appointed shall before he enter upon the execution of his duties take the oath which by the Act or Acts relating to the register office to which he is appointed is deputed to be taken by the registrar and deputy registrar; and every person to be so appointed shall have all the powers and authorities and be subject to the responsibilities and liabilities which the registrar for the county or place for which he is appointed would have had and been subject to in case such registrar had been elected pursuant to the Act or Acts herein-before mentioned relating to such county or place.

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Provision for custody of the documents in the local register offices.

CCI. The Commissioners of Her Majesty's Treasury shall from time to time make such provisions for the custody of the memorials, enrolments, books, indexes, and other documents and instruments in the said register offices for the west and north ridings of the county of York, the east riding of the county of York, and the town and county of the town of Kingston-upon-Hull, and the county of Middlesex, and the closing of such respective offices, and for searches therein and copies thereof, and for all other matters relating thereto, as to the said Commissioners may seem meet.

Compensation to the officers of the local register offices.

CCII. It shall be lawful for the Commissioners of Her Majesty's Treasury to award such compensation (if any) by way of pension or otherwise to the respective registrars and deputy registrars for the losses they will respectively sustain by the passing of this Act, and also to allow to any person who may be appointed as aforesaid to execute the duties of registrar for the west or north riding of the county of York, or the east riding of the county of York, and the town of the county of the town of Kingston-upon-hull, until the closing of the said respective register offices, and to any person in whose custody the memorials, enrolments, books, indexes, and other documents and instruments in the said register offices for the counties and places aforesaid shall for the time being be placed, such salary or other remuneration as to the said Commissioners may seem proper: Provided always, that if any person to whom any compensation by way of pension shall be awarded shall be nominated to any office under this Act, such pension shall go in part payment of the salary payable in respect of such office so long as he shall hold the same.

CCIII. The duties made payable by "The Succession Duty Act, 1853," in respect of every such succession as therein mentioned, shall not be affected by anything in this Act contained, but shall be payable according to the provisions of the said Act, in like manner as if this Act were not passed.

The emoluments and fees of attornies and solicitors for business affected by this Act, or the "Title to Real Property Act, 1856," to be re-adjusted.

CCIV. Whereas the alterations in the law and in the modes of dealing with real property effected by or which will be consequent on the provisions of this Act, and the "Title to Real Property Act, 1856," may be expected, according to the present mode of professional remuneration of attornies and solicitors, to operate injuriously both to them and the public, by reducing the emoluments and fees for the business they professionally transact below the scale of remuneration justly required by the nature of their duties and services, and the professional responsibility cast upon them: Be it therefore enacted, that it shall be referred to commissioners to be appointed by Her Majesty to re-adjust, fix, and determine the remuneration and the rate or mode or kind of remuneration to be in future charged and received by attornies and solicitors for conveyancing or other business regulated or affected by the provisions of this Act, or the said "Title to Real Property Act, 1856," and to frame, as far as may be practicable, a scale of fees and emoluments for such business; and such remuneration, fees, or emoluments as shall be fixed or determined or allowed by the said commissioners for such business as aforesaid shall be chargeable by attornies and solicitors for such business accordingly, with such power of varying the same from time to time as the said commissioners shall approve.

Short title.

CCV. The short title of this Act shall be "The General Register Act, 1856."

Appendix, Part C.

Plans and Suggestions by Persons not Commissioners.

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Outline, by Mr. E. N. Ayrton, Barrister, (*Conveyancer,*) of some Statutory Provisions for carrying out the Plan proposed by him in his Answers, Appendix, Part E., for simplifying Investigation of Title by means of Powers of Sale and Personal Consents, without Registration - - - - - - - 251

A Plan for the Registration of Titles to Land, by Mr. Randal Mac Donnell, Barrister, (*Conveyancer and Equity Draftsman*).

Mr. Mac Donnell.

A REGISTRATION of titles may be described to be a system of registration manifesting the actual state of ownership of land so far as it concerns purchasers to be acquainted with it, and thus getting rid altogether of retrospective deductions of title. There are two requisites to the establishment of such a system. In the first place, a plan of registration must be devised, which, when brought into operation, shall be adequate to the purpose in view. In the second place, means must be found for the introduction of such a registration, and for that purpose some machinery for effecting the transition from the present method of conveyancing is needful.

The following pages contain a detailed statement of a plan for a registration of titles, but do not comprise the machinery for effecting the transition to such a system. The plan thus detailed was intended to form part of a work embracing the whole subject, but is now printed separately for the purpose of being submitted to the Commission for considering the subject of Registration of Title.

The absence of a scheme for effecting the transition to the proposed system is the less material, inasmuch as the system itself contains no peculiarities inconsistent with the adoption for that purpose of any of the plans of transition which are already before the public. Both the attachment of the right of registration in the first instance to the possessory or ostensible ownership, and the introduction of a judicial or quasi-judicial examination of existing titles, might be made the means of introducing or facilitating the introduction of the system of registration here proposed. Some particulars in which it is conceived that the proposed plan would afford peculiar facilities for the transition from the present system of conveyancing will be adverted to hereafter.

I shall arrange the details of the proposed system under the four following heads, to be treated of in succession.

1. Interests in land to be admitted to the register.
2. Machinery for effecting changes of ownership and other purposes within the scope of the register.
3. System of notation and indexing for recording and rendering ascertainable the ownership of land.
4. Provisions with reference to the creation and security of interests in land not directly admissible to the register.

I.

Necessity of imposing limits to interests admissible to register.

I proceed to state what interests in land I propose to admit upon the register.

It is obvious that a registration of titles must be founded on the reduction within manageable limits of the interests admissible to registration. It would be impossible that each of the great variety of interests, vested and contingent, present and future, which may by law subsist in land, should be capable of constituting, under such a system, a distinct interest on the register. The means by which I propose to provide for the creation and enjoyment with

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undiminished facility and security of such interests in land permitted by law as may be excluded from registration will appear hereafter.

Fee-simple of land, manors, and rectories.

The ownership of the fee-simple of the land itself, together with that of manors, advowsons, and lay rectories, will be the first and most permanent subject of manifestation on the register.

Derivative interests.

All other interests in land, whether springing directly from such an ownership, or from any intervening estate, I shall henceforth term derivative interests. Interests may in this sense be derivative, either in respect of their determinable character, as leases and mortgages; or in respect of the subject-matter, as minerals and rents. The ownership of a rent or minerals in fee, will thus constitute a derivative interest. There are of course many interests derivative in both respects, as a rent for life or a lease of minerals for years.

Estates for life, years, and years determinable on lives.

The first derivative interests which I shall propose to admit to the register are estates for life, for years, and for years determinable on lives. These estates include the numerous interests involving the relationship of landlord and tenant. The propriety of extending the benefits of the register to the more enduring interests of this description will not be questioned. Actual possession, might, of course, be rendered sufficient for the protection of leases for short terms. The admission to the register of estates for life, coupled with that of rents and other interests hereafter referred to, will also facilitate the simpler forms of provisions for a wife and family in a manner very beneficial, especially to small properties. I do not propose that any of these interests should be capable of being created to take effect *in futuro*. It would be necessary that the devolution of registered estates for life should follow some uniform rule; and I propose, without reference to the general question of real representation, which will be referred to hereafter, that the registered interest in such estates should be transmissible in all cases to executors and administrators. The beneficial interest might, of course, be impressed with a descendible character by means of a declaration of trust.

Presentations to livings.

Presentations to livings form a class of derivative interests entitled to admission on the register.

Estates by marital right.

Marriage confers upon the husband, not being an alien, an interest in the real estate and chattels real of the wife. Her estates in fee, for life, for years, mortgages, and other interests, are variously affected, but in no case does marriage operate as an absolute transfer to the husband. Even in chattels real and mortgages, the wife retains an interest, always clearly distinguishing them from the absolute property of the husband, and which may re-expand into her original estate by the death of the husband in her lifetime, without having assigned the term, or received the mortgage money. I propose, that upon marriage the estate of the husband by marital right shall be admissible on the register as a derivative interest affecting any registered estate of the wife, and that the interest and power of disposition, which, from the nature of the wife's estate, may belong to the husband, shall be perfected by such admission.

Curtesy as a part of the estate by marital right.

That part of the husband's interest in the wife's estates of inheritance, known as tenancy by the curtesy, requires the occurrence of certain events over and above the marriage. When the occurrence of these events previously to the original registration admits, I would allow that registration to embrace the right to curtesy, and in other cases I would permit effect to be given on the register, on the occurrence of the necessary events, to such an extension of the estate by marital right. But the estate by curtesy would, in either case, be regarded as essentially part of the husband's estate by marital right, and not form a distinct species of interest on the register.

If the registered interest of the wife be not an interest in possession, the registration of the estate by marital right would leave it subject to such qualifications as that circumstance may occasion. In all cases this registration would serve the purpose of preventing a disposition by a married woman as a *feme sole*.

It will be hereafter seen that owners by representation are proposed to be so described on the register. The interest by marital right of a husband, in terms and mortgages belonging to the wife as executrix or administratrix, would of course have the peculiar incidents now attaching to the husband's interest in such cases.

Dower.

The indefeasible expectancy of dower of women married before 1834 can only be made compatible with the abolition of retrospective deductions of

title, by requiring the inchoate right or expectancy affecting any given land which such a woman, not being an alien, acquires by her husband becoming entitled to a registered estate liable to dower, to be connected on the register with the land affected. Otherwise the chain of registered owners must be traced, to see that their ownership has given rise to no outstanding rights to dower. There seems no hardship in this course; and I should propose that upon the acquisition of a registered estate liable to dower by the husband of a woman married before 1834, and during the continuance of the husband's ownership, her expectancy of dower be admissible on the register. *Mr. Mac Donnell.*

Dower under the Act of 1833 is, during the life of the husband, rather a right or prospect of succession than an interest. The position of a married woman renders it impossible that her right to dower can be the subject of an independent disposition by her in her husband's lifetime. Under these circumstances it appears not necessary that a wife's expectancy of dower under the Act of 1833, during her husband's lifetime, should appear on the register.

Upon the husband's death and an assignment of dower, the widow's interest, whether under the old or present law of dower, becomes an ordinary life estate, and may appear on the register on that footing. Neglect to register an indefeasible expectancy of dower during the ownership of the husband, or on the part of a widow to mature her right to dower at the proper time into a registered life estate, would involve the same penalty as a similar omission by a person entitled to any other interest in land. The mode of preventing dower from attaching under the proposed system of transfer will be referred to hereafter.

Jointures involve no important peculiarity as regards the land or rent constituting the jointure. The ownership of other real estate may be affected by the existence of a jointure, in the same way as by divorce, elopement, or any other extraneous circumstances destructive of a right to dower. But this does not appear to require that jointures should constitute a species of interest on the register distinct from other estates for life. Jointures not to be distinguished from other estates for life.

The transfer of the whole legal interest in land, by which a mortgage is now effected, involves technical consequences on the estate and position of the mortgagor, inconvenient to him without being useful to the mortgagee. Moreover, the present system of mortgages usually compels landowners to borrow all the money they may from time to time require, from a single lender, or to pay a heavy penalty, in the shape of interest, to persons willing to incur the dangers which now attend a second mortgage. One of the best consequences of a Registration of Assurances would have been the complete remedy of this evil. Mortgages.

I propose that mortgages shall constitute upon the register what they are in reality;—a species of derivative interest, the creation of which shall be compatible with the continuance on the register of the ownership of the mortgagor, and that several mortgages may be created in succession on the register, much as a copyholder may make successive conditional surrenders. The general incidents of successive mortgages, and the rights and powers of mortgagees, would remain precisely as at present, except that tacking would cease and priority become solely dependent on position on the register. The derivative interest thus proposed to be created would be in all respects personal estate transmissible to personal representatives; and the right to sue for the debt would follow the registered ownership of the mortgage.

Mortgages would attach to the whole interest of the mortgagor, and it would be requisite to substitute a direct enactment for the circuitous expedient by which a mortgagee of leaseholds is now protected from liability to the covenants of the lease. Terms, or other interests less than that of the mortgagor, might, when desired, be created by way of security for a loan; but such an act would appear on the register as a grant of the derivative interest created, and its redeemable character would require to be evidenced by an agreement between the parties. But the proposed alterations in the character of mortgages would remove all the usual inducements by which either the mortgagor or mortgagee is now led to have recourse to mortgages for terms in preference to mortgages of the fee.

I think it would be convenient to substitute for the right of second mortgagees to apply in Equity for a receiver, a right in every mortgagee to take

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possession against the mortgagor and subsequent mortgagees, subject, of course, to eviction by prior mortgagees. The estate of the mortgagor would, subject to the rights of the mortgagees, be an estate involving the right to possession at law as well as in equity.

The enlargement of the interest created by a mortgage, by means of a sale or foreclosure, will be referred to hereafter.

Judgments not to constitute interests admissible to register.

If it were thought expedient that under a registration of titles, permanent charges on land should be consequent on judgments, crown debts, and the like, it would be requisite that such charges should be connected with the interests in land affected, by means of charging orders analogous to those now applicable to Government Stock. But I shall not include charges of this kind amongst the derivative interests to be admitted to the register, because I think that the debtor's interests in land should only be affected on steps being taken by the creditor to obtain out of such interests actual satisfaction of the debt. Every such proceeding would constitute a *lis pendens*, and could affect the interest sought to be charged in that character. The operation of a *lis pendens* will be explained hereafter.

Suggestion as to proceedings for obtaining benefit of judgments.

It would be desirable that a uniform and simple mode of proceeding for obtaining the benefit of a judgment should be substituted for the present remedies by elegit, extent, and suit in equity, which differ from one another, and are of different efficacy as regards different interests in land. If the judgment itself did not constitute a charge on land, it would be necessary that a creditor should be enabled to institute such a proceeding immediately on the recovery of his judgment. Where a sale was sought for, it might, of course, take place only after such a period as would serve as a compensation for the interval which must now elapse between the judgment and a suit in equity for obtaining a sale.

Minerals.

The ownership of mines and minerals constitutes a class of interests in land derivative in respect of the subject-matter, which I propose to admit to the register.

Rents.

Rents, and other annual payments constituting private property, as lay tithes and land tax become the property of individuals under the redemption acts, constitute a second similar class of interests, which will be hereafter referred to under the general designation of rents. Rents arising out of the relationship of landlord and tenant will not fall within this designation.

Miscellaneous rights.

Besides minerals and rents, there is a great variety of interests and rights affecting the ownership of land, but not involving the right to the land itself. Such are rights of way and of common, franchises, rights of light and water, rights or licenses connected with the working of mines, and other easements and licenses of various kinds. Contracts that land shall not be built upon, or that its enjoyment shall be subject to any other restriction, and obligations concerning the maintenance and use of drains and sewers and the repairs of roads or bridges, are also common qualifications of the ownership of land.

Land may be subject to many of these rights or obligations by prescription, user, or custom. Rights and obligations thus arising do not at present constitute matter of title, and it would be impossible to bring them within the scope of the registry. Their existence must be left to be ascertained by inquiry on the spot, which the continuous user necessary to keep them on foot in general greatly facilitates.

Rights and obligations of this kind created by deed stand upon a different footing. Their importance is of course greatest in towns, including the metropolis, and in the mineral and manufacturing districts. Some provisions for their creation and subsistence by means of the register appear necessary. The state of the possession affords in many cases no indication whatever of their existence, and the absence of direct means of creating them would lead to the employment of circuitous expedients, such as the creation of rents or terms; and such expedients are one of the most fruitful sources of complexity in the ownership of land.

Without attempting to classify the various rights of this description which may be created by the acts of owners of land, it will be sufficient for the present purpose to propose to admit them to the register, subject to any restrictions which such a classification might suggest, as a class of interests derivative in respect of the subject-matter, under the general designation of Miscellaneous Rights.

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Some of these interests, such as rights of common, may be annexed by grant to the ownership of land, as well as to the person of an individual. In other cases, such as those of covenants restrictive of building, the interest or restriction of ownership created is only valuable as connected with the ownership of other land, but the general law does not afford the means of perpetuating this connexion. In many private Acts of Parliament, however, the legislature has thought fit to provide that both the benefit and obligation of such covenants shall run perpetually with the lands affected, and large estates have been, and are now being built on under the special system of law thus created.

I should propose to allow miscellaneous rights to be created, not only by vesting them in persons, but by annexing them to the ownership of other registered interests in land. It seems in all cases desirable, that objects which may be effected at all, should be effected directly rather than circuitously.

General principles concerning registered interests.

I have now enumerated the interests in land proposed to be admitted to the register. Registered interests would be capable of being acquired only by persons *in esse* and ascertained. Derivative interests admissible to the register might, of course, take effect either out of the fee simple of land, manors, rectories, or advowsons, or out of any derivative interest already on the register of a nature admitting other derivative interests to be carved out of it.

The owner of a registered interest in land might create any number of appropriate derivative interests in succession. The existence of any preceding derivative interest thus created would not prevent any such interest subsequently created from being a present vested interest, though it might, of course, prevent such interest from taking effect in possession.

Estates with reference to unity or division of ownership.

Interests in land may at present be held in severalty, joint tenancy, coparcenary, and common, and by husband and wife by entireties. There is, however, little practical difference between tenancy in coparcenary and in common; and the distinction between joint tenancy and the tenancy by entireties of husband and wife, is still smaller. Joint tenancy, with its rule of survivorship, is highly convenient with reference to the estates of trustees; and tenancy in common is adapted to the purposes of a beneficial joint ownership. Existing tenancies in common are numerous, and judging from experience, it may be expected that many of them will continue for long periods. The convenience of a beneficial joint ownership to co-heiresses, and when, as in the case of a single house, a partition is impracticable, is frequently considerable.

Registered interests to be held in severalty, joint tenancy, and tenancy in common.

I should propose that registered interests in land may be held in severalty, in joint tenancy, and in common. By way of substitution for tenancy by entireties and coparcenary, the creation of joint tenancy between husband and wife would be permitted, and co-heiresses would be tenants in common. Looking to the purposes for which joint tenancy is useful, it would seem convenient that, as in the case of stock, a registered joint tenancy should not be severable, except by the concurrence of all the subsisting joint tenants. In transfers affecting joint tenancies the same person should be permitted, as in the case of stock, to be transferror and tranferree. Transfers from one to himself jointly with others, and analogous transfers in which the aid of uses is now sometimes available, would thus be practicable in all cases by a single act.

Recapitulation.

The interests proposed to be admitted to the register, and the tenancies with reference to unity or division of ownership in which they may be held, may be recapitulated, as follows:—

Original Interests.	Interests derivative in respect of their determinable character.	Interests derivative in respect of the subject-matter.	Tenancies with reference to unity or division of ownership.
Fee Simple of Land. Fee Simple of Manors. Fee Simple of Lay Rectories. Fee Simple of Advowsons.	Estates for Life. Estates for Years. Estates for Years determinable on Lives. Presentations to Livings. Estates by Marital Right. Expectancy of Dower (of Feme Covert married before 1834) Mortgages.	Minerals. Rents. Miscellaneous Rights.	Severalty. Joint Tenancy. Common.

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II.

I now come to the machinery for effecting changes of ownership and other purposes within the scope of the register. I shall first state some general principles which I conceive to be applicable to this part of the subject, and shall then proceed to the details peculiar to the plan of registration proposed in these pages.

Necessity to a registration of titles of prescribed forms of instruments.

It is essential to any system of registration of titles that all changes in the registered ownership of land should, so far as the functions of the registry officers are concerned, be effected by means of prescribed forms of instruments. It would be impossible to introduce any system of judicial registration allowing the registrars to put their own construction upon instruments prepared at the discretion of the parties, so as to render them not material to the subsequent title; and if these instruments were material to the subsequent title the register would not be a register of titles, but a register of assurances.

Application of this principle to wills.

Expediency of real representation.

This observation applies with peculiar force to wills. For the purposes of a registration of titles, it would undoubtedly be convenient that the changes of ownership consequent on death should in all cases take effect through a representative, rather than directly by will or descent. The alternative appears to be, that devises should be made by means of prescribed forms applicable to the various modes in which interests in land may be permitted to be dealt with on the register. The questions arising on ordinary wills are so difficult, and an immediate solution of them is often so inconvenient, that such wills could certainly not be made the foundation for any of the functions of the registrars. It would of course be quite consistent with this suggestion, that devises by ordinary wills should be effectual as trusts, to which effect might be given by a Court of Equity, against the registered interest which the heir would acquire in land not devised by means of the forms of the registry office. An heir taking subject to such a will would thus become in fact a real representative.

Changes of ownership by operation of law.

Changes in the ownership of land, by operation of law, would assume an altered character under a registration of titles. Such changes are now occasioned, either by the happening of certain events, without any formal act of the parties, as in the case of descent, or by the effect of judicial or quasi-judicial proceedings, as where persons are constituted representatives of deceased persons, assignees in bankruptcy, or the like. When there is no dispute, evidence of the happening of events occasioning such a change of ownership need not be obtained until some future dealing with the land. But under a registration of titles, an estate acquired by operation of law could not be admitted to the register without some evidence of the events or proceedings on which the estate depended. The position of the claimant would be analogous to that of an heir of copyholds, who must procure a presentment of his heirship before he is admitted.

Evidence in relation to such changes.

Rules prescribing the nature and amount of evidence requisite for procuring effect to be given to each description of change of ownership by operation of law would be necessary.* The examination into the sufficiency of the evidence in undisputed cases would be analogous to the common form business of the Ecclesiastical Courts, and would be the duty of the registrars; but notice to parties who might be affected by the change of ownership, and means of carrying disputed questions into a court of justice, would be requisite.

Exceptional changes of ownership by operation of law.

These rules and proceedings would be founded on a classification of changes of ownership by operation of law; and would embrace all ordinary cases. It is plainly necessary, however, for the application of such rules, that the law, by whose operation such changes of ownership are occasioned, should, whether written or unwritten, be sufficiently well settled and well understood. There would be almost as much difficulty in requiring the registrar to infer a change of ownership upon the occurrence of a given event, from the provisions of an Act of Parliament of a local character or of rare operation, as in requiring him to infer an estate in fee simple in a particular person from the language of a difficult will. I think that changes of ownership by operation of law not falling within the proposed classification, could only have effect given to them

* See the Merchant Shipping Act, 1854, and its Schedules, for the evidence on which effect is given by the registrars of shipping to changes of ownership occasioned by the death, bankruptcy, or marriage of owners and mortgagees of ships.

by the registrar, upon the direction of a judge, to be obtained by the parties. Cases of this kind would, of course, be of unusual occurrence.

Adaptation to registration of titles of judicial proceedings occasioning changes of ownership.

The forms of many judicial or quasi-judicial proceedings, occasioning changes of ownership by operation of law, would require to be remodelled, for the purpose of adapting them to a registration of titles. This would be the case with reference to orders of the Lord Chancellor and Court of Chancery under the Trustee Acts.

Adverse possession.

The severance of the registered from the possessory ownership by adverse possession, would require to be corrected by the judgment of a Court, to which powers of effecting the necessary change in the registered ownership in such cases must be given. A mode of proceeding by the actual against the registered owner for obtaining such a judgment would be necessary; and it would probably also be convenient that a proceeding by the registered owner against a person in possession, successfully resisted by the latter on the ground of adverse possession, might, under proper conditions, entitle the latter to a similar judgment; much as a mortgagor's suit for redemption may now end in a decree of foreclosure in favour of the mortgagee.

Expense of changes of registered ownership by operation of law.

The expense of procuring, upon the acquisition of an estate by operation of law by the happening of events, such evidence as would suffice in undisputed cases would fall far short of the expense now incurred by landowners in obtaining evidence of these events on subsequent dealings with the property often after a considerable lapse of time.

Effect of omission to perfect on register interests acquired by operation of law.

Still it might frequently happen, especially in cases of small properties changing owners only by descent, that persons acquiring estates by operation of law would be content to assume the undisputed possession of the land, without perfecting their interests on the register; or would die or become bankrupt before they had had time to do so. In cases of determinable estates, time would remedy such omissions; and in all cases the registration of the interest of an existing owner would not be prevented, but only made dependent on a greater amount of evidence by the intervention, between himself and the last registered owner, of one or more proprietors, whose interests, acquired by operation of law, had not been admitted to the register. It is scarcely necessary to add, that no change in the registered ownership, otherwise than by operation of law, could be caused by any act of an owner whose interest had not been perfected upon the register.

Every change of ownership to require the execution of an instrument.

I propose that the immediate means of effecting changes in the registered ownership of land, shall be in all cases the deposit of appropriate instruments duly executed in the registry office. When the change of ownership arises from the act of the parties, the signature of the instrument by the person disposing of an interest will of course be the means of effecting it; and when the change of ownership arises by operation of law, the instrument will be founded on the previous production and record in the register office of the requisite evidence of the events or proceedings occasioning such change. In either case, the instrument deposited will further require the signature of the person acquiring an interest (if not an infant or lunatic), and of her husband if she be a married woman, or of the guardian or committee of an infant or lunatic. The last-mentioned signature would be desirable, both in testimony of acceptance of the interest acquired, and as a means of furnishing the registry officers, in the great majority of cases, with the signatures of persons entitled to registered interests in land. Changes of ownership by will would require the deposit both of the testamentary act and of an instrument executed by the devisee.

Evidence of events or proceedings constituting general dispositions.

When changes of ownership by operation of law arise from events or proceedings constituting general dispositions, as in the cases of bankruptcy or representation, it would, of course, be convenient that the necessary evidence of the events or proceedings constituting the general disposition should be furnished once for all, and should be the foundation for the change of ownership as to any number of interests in land which might be affected.

Issue of forms of instruments applicable to all transactions.

Forms of instruments, applicable to the various transactions within the scope of the register, might be printed under the sanction of the registry office, and sold throughout the country. As the particulars for adapting these forms to each transaction would be almost entirely confined to names, dates, and figures, I think they might be left to be inserted by the parties.

Mode of dealing with instruments on their receipt in the register office.

On the receipt of an instrument in the registry office, the signatures will be verified. The acts of married women would require to have been acknowledged upon a separate examination. In the case of testamentary instruments, if wills

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of real estate be not proved elsewhere, evidence analogous to that produced on probate would be requisite. Notice to parties interested, and means of carrying disputes concerning wills into a court of justice, would be necessary. The establishment of a will of real estate under the present practice by a Court of Equity, would, of course, serve the same purpose as any other description of probate. If the instrument be found authentic and valid, the competency of the parties, with reference to the existing state of ownership on the register, and the regularity of the instrument in other respects, will be examined into, and effect will be given, in manner hereafter to be explained, to instruments found regular in all respects. If any question arose concerning an instrument, the parties concerned would be communicated with. Country business would, of course, be transacted by means of the post office.

Powers of attorney.

Powers of attorney would be in prescribed forms issued by the registry office, and their regularity would be ascertained on the same principles as that of other instruments.

Changes of registered ownership wrongfully effected.

The consequences of changes in the registered ownership wrongfully effected, remain to be considered. Such changes may be caused by means of instruments, which, though not forgeries, would now be void or voidable for disability of the grantor, want of consideration, or other circumstances; by means of false or deceptive evidence of the happening of events occasioning changes of ownership by operation of law; by means of mistakes of the registry officers; and by means of forgeries, either of instruments effecting changes of ownership, or of judicial, or of quasi-judicial, proceedings, such as probates, or appointments of assignees in bankruptcy. I do not include in this enumeration defects in such judicial proceedings when the proceedings themselves are authentic, such as the admission to probate of a forged will, because the rectification of such an act would be the office of the court or jurisdiction from which it proceeded.

Proposed mode of dealing therewith.

Remedy against persons acquiring an interest wrongfully, and volunteers under them.

I should propose as a general principle with reference to all interests thus wrongfully acquired, that they should not be actually void, but should be subject to the effect of proceedings for restoring the registered ownership to its proper state, and that persons acquiring an interest directly by means of the wrongful change of ownership, and volunteers claiming under them, should be in all cases liable to such proceedings. This would impose on each successive purchaser the necessity of seeing that the actual transfer to himself was regular and authentic. A person accepting a transfer from a lunatic, or a forged transfer, could be compelled to retransfer the interest thus acquired.

The obligation thus imposed on purchasers could not extend further back. A *bonâ fide* purchaser for valuable consideration, taking an unobjectionable transfer from the owner of a subsisting registered interest, would be not the less entitled to protection because the vendor had acquired his interest by wrongful means.

Attachment of remedies to purchase monies in certain cases.

Upon a sale for money by a person who has wrongfully acquired an interest, or by a volunteer under him, the remedy diverted from the registered interest ought to attach to the money arising from the sale. This, however, would be at best an imperfect substitute, and any further remedy, subsequently to a disposition for valuable consideration of the interest wrongfully acquired, must be derived out of the funds of the registry office. I think, however, that there are few cases in which such a remedy ought to exist.

No such further remedy would be necessary, when the wrongful change of ownership arose from the act of the owner. Where the owner is under no disability, this is sufficiently obvious. The means for the prevention of improper dispositions by infants, lunatics, and married women, will be hereafter considered; and to their operation, coupled with the remedy against the person acquiring an interest by the improper disposition, and volunteers under him, I should propose to leave the protection of such persons. I have already suggested, that for procuring effect to be given to changes of ownership by operation of law and dispositions by will, notice to persons who may be affecte should be required by the rules of the office. Persons receiving such notices would have an opportunity of asserting their rights in a court of justice, and could consequently have no claim to be indemnified by the office.

Cases requiring indemnification by means of funds of registry office.

Changes of ownership may, however, be wrongfully effected by means of false or deceptive evidence, under circumstances not requiring notice to the person prejudiced, by means of mistakes of the registry officers, and by means of forgeries. In these cases there must be in general a right to be indemnified. An interest in land could not be forfeited because the registrar had been

deceived by a forged disposition, or by false evidence of the death and heirship of a living owner: or by reason of a mistaken entry by the registrar. *Mr. Mac Donnell.*

When the interest wrongfully transferred has become vested in a *bonâ fide* purchaser for valuable consideration, I propose that the indemnity to the original owner should assume the form of a compulsory repurchase from such purchaser by the office, conducted on the same principles as a compulsory purchase of land by a public company. Powers of this kind are familiar to the public, and would not create the same alarm as other modes of dealing with forgeries, and the purpose for which they would be granted is certainly sufficiently beneficial to warrant their creation. In cases where the registry office was bound to indemnify, it would, of course, be entitled to put in force the remedies proposed to be given against the person who acquired an interest by the wrongful disposition, and volunteers under him. Form of such indemnity.

When the interest which undergoes the wrongful change of ownership involves the right to possession or receipt of rents and profits, the rights, with reference to an indemnity, both of the original owner and of a purchaser from the wrongful owner, whose interest is repurchasable by the office, ought to be affected by laches with reference to the possession or receipt of rents and profits. It is only by means of such laches that a fraud, with reference to the ownership of an interest involving the right to possession, could be successful. Effect of laches as to possession on right to indemnity.

Although it is necessary to provide for the cases I have just referred to, they would unquestionably be of rare occurrence. The only common change of ownership by the operation of law on the happening of events, would be by descent; and it is to be hoped the possibility of frauds on the registry by means of false evidence, in such cases, would be avoided by a system of real representation. With regard to forgeries, most of the precautions which have been found successful at the Bank of England might be adopted. As a substitute for the identification by a broker, the attestation of instruments by solicitors, being Commissioners for administering oaths in Chancery, might be required. It might be made incumbent on such solicitors to satisfy themselves by inquiry, not only as to the identity, but as to the freedom from personal disability of the persons whose signatures they attested. An obstacle to forgery might also be created by the issue, after the manner of railway companies, to every person acquiring a registered interest in land, of a certificate or document to be produced or its loss accounted for, on every subsequent disposition by such person. Moreover, the greater notoriety, and greater amount of negotiation and knowledge of the person and character of the vendor, on a sale of land, and the examination into the state of the possession, and inquiries of tenants when the land is let, would create many impediments to forgery, which do not exist in the case of stock. So also would the obligation proposed to be imposed on purchasers, of seeing that the actual instrument of transfer to themselves is regular and authentic. A purchaser of stock is under no such obligation. Attempts at forgery, when made at all, would for many reasons probably be directed towards mortgages rather than towards sales or leases. In cases of forged mortgages, however, an exact equivalent, as in the case of Government stock, could be given to the person injured, without disturbing the transaction to the prejudice of any innocent party. As to the probable expense of indemnifications, the experience of the Bank of England might afford some guide, though, for the reasons above stated, I think it likely that an estimate, founded directly on that experience, would prove far too high. Wrongful changes of ownership entitling persons to be indemnified would be rare.

Questions concerning voluntary conveyances would probably arise under a registration of titles, with reference to creditors only. Purchasers would be effectually protected against fraud by ascertaining the state of the registered ownership, and it could hardly be permitted, when fraud on a purchaser was out of the question, that a registered interest in land, created without consideration, should, for the purpose of a sale, remain at the disposal of the person who had parted with it. Voluntary conveyances.

But it would be sufficient for the purposes of the registry, that the effect of want of consideration should be dealt with by a Court of justice. It must indeed be observed, that although it would be useful with reference to stamps and on other grounds, that money considerations, when existing, should be stated in the prescribed forms of instruments employed in the registry office, there are many species of valuable consideration which could not be manifested by instruments of that description, but depend on extrinsic circumstances with

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which it is obviously undesirable that the officers of the registry should be concerned. Valuable considerations not unfrequently consist of, or arise out of, a complicated series of transactions.

I should not propose that dispositions by aliens, made previously to any proceedings on the part of the Crown, should be either void or voidable. The effect of such proceedings will be adverted to hereafter.

Jurisdiction for correcting wrongful changes of ownership.

I should propose that the changes in the registered ownership requisite for undoing the effect of a wrongful change of ownership, should be the province of a Court of Equity, acting on the person of the wrongful owner, or by means of the Trustee Acts, where the acts necessary to be done by such an owner cannot be had.

Machinery of Lands Clauses Consolidation Act and similar exceptional systems.

The machinery for effecting compulsory sales and purchases, as established by the Lands Clauses Consolidation Act; inclosures, exchanges, and partitions, under the General Inclosure Act, and other similar exceptional changes of ownership, would of course require to be adapted to a registration of titles. I

Attainder and conviction of treason and felony.

think the changes of ownership of land, occasioned by attainder or conviction of treasons and felonies of various kinds, and the effects of subsequent pardons, would also need to be placed on a more uniform and simple footing. The effect of attainder could not take relation back to the commission of the offence. There could be no difficulty in accomplishing any of these objects; but I think it unnecessary to encumber these pages by entering into the details which they

Corporations.

involve. Nor shall I refer to the peculiar provisions which would be necessary with reference to the lands of corporations aggregate or sole, and to dispositions by ecclesiastical corporations.

Gavelkind and other peculiar tenures.

Another class of exceptional cases, which will not be further referred to, would arise from the peculiar tenures of gavelkind, burgage, ancient demesne, customary freeholds, and the like. It is not to be supposed that these tenures could survive any logical or systematic reform of the law of real property, but unless they could be got rid of simultaneously with the introduction of a registration of titles, provisions applicable to their peculiar incidents would be needed. Means of manifesting the tenure of land upon, or in connexion with, the public

Copyholds.

map, might probably be devised. Copyholds could not of course come within the operation of a registration of titles.

Maps.

I assume that a registration of titles will be founded on public maps. If the connexion between the possession and the documentary title of land be not traced back upon a purchase, an actually demonstrative description of the land, which maps alone can give, appears to me indispensable.

Objections to registration of titles not founded on maps.

Moreover, the transfer of land verbally described upon a register affording conclusive evidence of ownership, could not be permitted to be made by any fresh verbal description, without evidence that the land comprised in the new description also fell within the old. Consequently, in the absence of maps, land would probably, except in cases of subdivision of ownership, be transferred, as copyholds are now, by unchanging and frequently inapplicable descriptions. Upon every subdivision, whether by sale or the creation of a derivative interest affecting part only of the land comprised in any verbal description, an identification of parcels to the satisfaction of the registrar would be requisite. The description of the whole must be broken up into separate descriptions applicable to the land affected and the land remaining unaffected by the disposition. The creation of several derivative and sub-derivative interests affecting incommensurate portions of the land of any owner would occasion a repetition of this process productive of great complication.

Another consideration of some interest is, that without the aid of maps it might be difficult to ascertain with precision whether any given portion of land, or to what extent the land of the country generally, had come under the operation of the new system of transfer.

Manors, advowsons, and rectories. Catalogues in aid of maps.

Manors, advowsons, and lay-rectories would, as pointed out by the Registration Commissioners' Report, require, in aid of maps, district-books or catalogues, which it seems could be readily compiled. Means of recording the partial or total extinguishment of manors and the division or union of livings in connexion with such books would be necessary. For the creation of an interest in a house or building, or any part thereof, distinct from the ownership of the soil, means of identification auxiliary to the map would also be requisite if the case were worth providing for.

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A Land Index, leading directly to the ownership of every given portion of land, can be obtained only by means of public maps, and must be framed with reference to the numbers on such maps.

I now proceed to the machinery peculiar to the proposed system of registration.

Classification of acts affecting ownership of land.

I shall divide acts directly affecting the ownership of land into four classes. The first of these classes consists of transfers from one person to another of any subsisting registered interest in land, whether original or derivative. Acts of this class changing the person of the owner but not the subject-matter of the ownership, I shall call absolute transfers.

Class I. Absolute transfers.

By act *inter vivos* of owner.

An absolute transfer by the owner by means of an act *inter vivos* is the simplest as well as the commonest of all absolute transfers. The execution of a form of act identifying the thing transferred and testifying the object of the parties is all that is requisite.

By act *inter vivos* of mortgagee with power of sale or of husband as to wife's term or mortgage.

Absolute transfers by act *inter vivos* could also be effected by a mortgagee under a power of sale to be created as hereafter explained, and by a husband of the wife's term. These transfers would operate on the interests of the mortgagor and of the wife, and have the further effect which will be referred to hereafter of extinguishing the derivative interests of the mortgagee and the husband. I think it would be proper that the wife's mortgage should be capable of being similarly transferred during the coverture, unless indeed it were thought preferable to give the husband and wife jointly such a power. It is frequently only upon a transfer that the mortgagor can procure money to satisfy the mortgage. The transfer, if permitted at all, must be conclusive as regards persons subsequently dealing with the mortgage.

By will.

If registered interests constituting real estate should be devisable by wills, absolute transfers by will would be founded on the deposit in the registry and authentication in manner before adverted to of the testamentary act.

By descent and escheat (if no real representation) and survivorship of husband as to wife's term.

Descent and escheat for want of heirs (if land be not transmissible to representatives) and the survivorship of a husband (as to the wife's terms) occasion absolute transfers consequent by operation of law on the happening of events. Absolute transfers on the happening of events also take place by operation of law on the payment of money under certain Acts of Parliament and in various other cases. I have already proposed that a classification should be made of all ordinary changes of ownership of this kind, that effect should be given to changes falling within such classification on the production of a prescribed amount of evidence, and that the direction of a judge should be requisite to enable effect to be given to changes of ownership of this kind not falling within the proposed classification.

By evidence of events.

By judge's order on events.

For the purpose of descents the ownership of land would by the existing law of descent sometimes have to be traced back through several owners, but this process, which the register would facilitate, will not be confounded with a retrospective investigation of title on a sale.

By judicial proceedings.

Absolute transfers of ownership by operation of law are also occasioned by a variety of judicial or quasi-judicial proceedings. Representation of deceased persons, bankruptcy, insolvency, foreclosure, office found in the case of an alien, and orders under the trustee acts, may give rise to changes of ownership in this way. Every transfer of this description would be founded on the act duly authenticated of the court or public functionary having jurisdiction.

Representation.

Ownership by representation involves many details which would require to be adapted to the machinery of a registration of titles. Executorships limited in duration, or as to the property to which they apply, successive probates of the same will by several executors, void and voidable probates, the revocation of probates, special and limited, and void and voidable administrations, and the repeal of administrations, at present give rise to various peculiarities in ownership by representation. For the purposes of the register it would be requisite that the registered owner by representation for the time being should have an absolute interest and right of disposition, and that fluctuations in such ownership should be manifested by absolute transfers on the register, founded on the acts of the Court having jurisdiction over the representation. I think it would not be expedient that specific legatees of registered interests in land should be admitted on the register otherwise than by a transfer by the executor.

Specific legatees.

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Owners by representation should be so described on the register, with a view to the application of the rules regulating the transmission of such ownerships. It might deserve consideration whether one of several representatives should have power to transfer without the concurrence of his fellows. Such a transfer, though legally effectual, is not treated as sufficient according to the present practice of conveyancers. The death of one of several representatives would fall within the same rules as the death of one of several joint tenants.

Bankruptcy.

Orders annulling bankruptcies, changes of assignees in bankruptcy and insolvency, and adjudications in bankruptcy following previous petitions and vesting orders in insolvency, would be dealt with on the same principle as the analogous fluctuations in ownership by representation already referred to. A declaration that the owner was not a trustee would form part of the evidence on which absolute transfers to assignees in bankruptcy or insolvency would be founded.

Judgment on adverse possession.

Absolute transfers would also be effected under the proposed system by means of judgments obtained in manner already explained for the purpose of giving effect to changes of ownership resulting from adverse possession.

Assignments and sales under elegits and extents.

Assignments of terms by the sheriff under elegits and sales under extents have not been included in the foregoing enumeration of judicial and quasi-judicial absolute transfers, because I have already suggested that a uniform mode of proceeding for obtaining the benefit of a judgment should be substituted for the present remedies by elegit, extent, and suit in equity. It would depend on the form of the substituted proceeding whether the absolute transfer on a sale for payment of a judgment debt would be purely judicial or would be effected by the act of the owner under the direction of a court of justice, and on his default or incapacity by order under the trustee acts.

Attainders and convictions of felony and treason.

Absolute transfers consequent on attainders and convictions of felony or treason have been omitted from the foregoing enumeration for reasons already appearing.

Exclusion of right to dower on absolute transfers.

As a substitute for the limitation to uses in bar of dower, it would be proper to permit the introduction into absolute transfers of interests liable to dower of words having the effect of excluding the right to dower of women married before 1834.

Division of ownership of derivative interest by absolute transfer.

Not admissible as to mortgages.

A subdivision of the ownership of a derivative interest may, of course, in general be effected by means of an absolute transfer of part of the land or other subject-matter of such interest. I think, however, on the whole, that the registered ownership of mortgages should not be capable of subdivision. Great inconvenience might result from the multiplication of incumbrances in a manner over which the mortgagor would have no control. Miscellaneous rights attached to land would of course accompany the ownership of such land however divided.

Effect to be given to instruments of absolute transfer.

Such instruments would not form part of subsequent manifestation of ownership.

Upon the receipt of an instrument of absolute transfer, it will be the duty of the registrars to give effect to it by the requisite entries in the register hereafter to be referred to. The instrument itself would be preserved and connected with these entries by proper references, but the manifestation of ownership would be the office of the entries and not of the instrument, nor would such instruments enter into any certificate or information concerning the state of ownership subsequently furnished. Such information would relate to the actual ownership manifested by the registry, and not to the manner in which it had been brought about.

Reference to qualifications of this rule.

I shall hereafter refer to some qualification of this principle which will be necessary with reference to mortgages and to some absolute transfers effecting subdivisions of miscellaneous rights vested in individuals.

Absolute transfers would not refer to derivative interests affecting interest transferred.

When an interest in land absolutely transferred is subject to derivative interests carved out of it, or being itself a derivative interest, is preceded by other derivative interests having priority over it, the transfer must necessarily be subject to the qualifications of ownership thus occasioned. But I do not think that the instrument of absolute transfer (which is not intended to be the means of furnishing information as to the state of ownership), need do more than identify the interest transferred. The manifestation of the qualification of ownership arising from the existence of other interests would be the province of the register and of the certificates of ownership which would be issued by the registrars.

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Recapitulation.

The foregoing classification of absolute transfers may be recapitulated as follows :—

Act *inter vivos* of owner.
" " " mortgagee with power of sale.
" " " husband as to wife's term or mortgage.
Will of owner
Descent } If no real representative.
Escheat for want of heirs
Survivorship of husband as to wife's term.
Evidence of events occasioning other classified absolute transfers of ownership by operation of law.
Judge's orders for giving effect to absolute transfers not within above classification on happening of events.
Representation.
Bankruptcy.
Insolvency.
Foreclosure.
Office found in case of alien.
Order under Trustee Acts.
Judgment on adverse possession.

Forms of absolute transfers.

The three following forms of absolute transfers may serve to illustrate the manner in which such instruments might be framed. The particulars which would be inserted by the parties using them are printed in red ink, and those which would be added by the officers of the register, in black letter. The objects of the latter entries will become more apparent hereafter.

Nature of transfers represented by forms.

The first form applies to the transfer by act *inter vivos* of the fee-simple of land. The second represents the transfer by bankruptcy of a lease of land, and refers to the record in the register office of the bankruptcy proceedings on which it is founded. The third form represents the transfer by a husband of his estate by marital right, including curtesy. The reasons for distinguishing the moiety of land dealt with as moiety No. 1., will become apparent hereafter when the subject of indexes is referred to.

The circumstance that the transfer is made by the owner, forms one of the particulars inserted in the first and third forms, because such transfers might also be made by mortgagees with powers of sale, and the bankruptcy is stated to be that of the owner in the second form, because the transfer thereby made might also have been consequent on the bankruptcy of the husband of a female owner.

There would be a considerable difference, hereafter to be adverted to, between the mode of entering and dealing with an absolute transfer of a derivative interest as to all and as to part only of the subject-matter comprised in it. The second and third forms are instances of these two classes; and in imitation of a practice at the Bank of England, for the purpose of marking the distinction, the word *all* in the second form, and the word *part*, in the third, are printed in capitals. The second transfer, embracing all the land comprised in a lease, contains no schedule, because the lease itself would best afford information as to the subject-matter affected by such a transfer.

Absolute transfers of the other classes included in the foregoing recapitulation would be framed on the same principles, and differ but slightly in form from these specimens.

ABSOLUTE TRANSFER of 6th day of April, 1860. No. 219.
From account of 1858, No. 29, to account of 1860, No. 764.

ABSOLUTE TRANSFER of fee-simple of land by owner.

Transferror - - { John Bryan, of Cheapside, in the city of London, Bookseller.

Transferree - - { Lucy Monckhouse, of Gosport, in the county of Hants, Spinster.

Consideration in money, 4,000*l.*

Date of transfer, 4th day of April 1860.

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Signature of transferror - - John Bryan.

Witnesses to signature of transferror - - { Andrew Brereton, of Lincoln's Inn, in the county of Middlesex, Gentleman, a Commissioner for administering Oaths in Chancery. / Henry Bailey, of Hampstead, in the county of Middlesex, clerk to Mr. Brereton

Signature of transferree - - Lucy Monckhouse.

Witnesses to signature of transferree - { Henry Fleming, of &c., a Commissioner for administering Oaths in Chancery. / Charles Higham, of, &c.

SCHEDULE OF LAND TRANSFERRED.

County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or Undivided Share transferred.	County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or Undivided Share transferred.
Hants	24	1442	Field - -	Entirety.	Hants	24	1564	Field - -	Entirety.
,,	,,	1443	,, - -	,,	,,	,,	1565	Cottage and garden	,,
,,	,,	1444	House and offices	,,	,,	25	329	Field - -	,,
,,	,,	1477	Field - -	Moiety, No. 1.	,,	,,	330	Field - -	,,
,,	,,	1480	,, - -	,,					
,,	,,	1562	,, - -	Entirety.					
,,	,,	1563	,, - -	,,					

ABSOLUTE TRANSFER of 10th day of February, 1865, No. 397.

ABSOLUTE TRANSFER of Lease* of Land for years, of 21st day of April 1860, No. 172, affecting fee-simple of land as to ALL, by bankruptcy of owner.

Bankrupt - - Thomas Harrington, of, &c.

Assignees in bankruptcy, transferrees { John Dickson, of, &c., Official Assignee, and James Herbert, of, &c., and Matthew Sebright, of, &c., Creditors' Assignees.

See entry of bankruptcy and assigneeship in Record of proceedings in bankruptcy affecting the Ownership of Land, 1st day of February, 1865, No. 11.

Date of transfer, 3rd day of February 1865.

Signature of Official Assignee - - John Dickson.

Witnesses to signature of Official Assignee - { George Lovett, of, &c. a Commissioner, &c. / Alfred Batty, of, &c.

Signature of Creditors' Assignee - - James Herbert.

Witnesses to signature of James Herbert - { George Lovett, of, &c., / Alfred Batty, of, &c.

Signature of Creditors' Assignee - - Matthew Sebright.

Witnesses to signature of Matthew Sebright { Arthur Duncan, of, &c., a Commissioner, &c. / Philip Wilder, of, &c.

ABSOLUTE TRANSFER of 3rd day of July, 1871, No. 927.

ABSOLUTE TRANSFER of Estate by marital right, including curtesy, affecting fee-simple of land under creation† of 29th day of June 1869, No. 29, as to PART by owner.

Transferror - - Thomas Watson, of, &c.

Transferree - - Philip Anderson, of, &c.

Consideration in money, 150*l.*

Date of transfer, 1st day of July 1871.

Signature of transferror - - Thomas Watson.

Witnesses to signature of transferror { George Abbot, of, &c., a Commissioner, &c. / William White, of, &c.

Signature of transferree - - Philip Anderson.

Witnesses to signature of transferree. { George Abbott, of, &c., a Commissioner, &c. / William White, of, &c.

* See the lease itself, post, p. 19.

† See the creation of this estate, post, p. 21.

SCHEDULE OF LAND TRANSFERRED. *Mr. Mac Donnell.*

County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or Undivided Share transferred.	County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or Undivided Share transferred.
Hants	24	1477	Field - -	Moiety, No. 1.					
"	"	1480	" - -	"					
"	"	1565	Cottage and garden	Entirety.					

Class II. Creation of derivative interests.

I now come to the second class of acts affecting the ownership of land, viz. the creation of derivative interests.

Many incidents of derivative interests are incapable of being brought within prescribed forms of instruments.

It has been observed that all changes in the registered ownership of land must, so far as the functions of the registry are concerned, be effected by means of prescribed forms of instruments. There is, however, an infinite variety of incidents attaching to derivative interests which it would be impossible to bring within any such system of forms. It will be sufficient to refer to the provisions in leases concerning the course of husbandry, the extent and description of buildings to be erected, and the mode of working mines, and to the provisions in mortgages for the reduction of the rate of interest in various events, for repairs and insurance, the application of the monies thereby arising, and the qualifications of such provisions often consequent on obligations subsisting towards the landlord or towards previous mortgagees.

Register must manifest all the incidents of a derivative interest.

It is the province of the register to afford a complete definition of every subsisting derivative interest, and for this purpose a manifestation of all the incidents attaching to it is essential. The further functions of the registry, however, with reference to a derivative interest, are confined to recording its ownership, the dispositions made in exercise of any powers of disposition accompanying or overriding it, the modifications undergone by it under the class of acts next to be referred to, the sub-derivative interests carved out of it, its priority or subsequence with reference to other derivative interests, and ultimately its extinguishment. For these purposes the particulars material to be manifested with reference to a derivative interest on its creation, are confined to the nature of the interest as regards duration and subject-matter under the classification already stated, the land affected by it, the names of the persons creating the interest, and in whose favour it is created, and the powers of disposition distinct from actual ownership, which accompany or override it. Such powers of disposition would exist only in the case of an estate by marital right where they attach by operation of law, and of a mortgage in which they are created under the contract between the parties.

Further functions of the registry.

Particulars necessary thereto.

Derivative interests to be created by forms embodying foregoing particulars.

Other incidents to be attached thereto by Special Provisions not to be noticed by registrar.

I propose that derivative interests be created by means of prescribed forms embodying the foregoing particulars, together with some others material with reference to stamps, or on other collateral grounds, and that incidents not falling within these forms may be attached to derivative interests by means of provisions superadded at the discretion of the parties. It would not be the province of the registrars to examine or notice these provisions, nor could such provisions be the foundation of any changes of ownership, except changes of ownership enforceable by proceedings in a court of justice. Provisions thus superadded to an instrument creating a derivative interest I will call Special Provisions. Derivative interests arising by operation of law could not, of course, be the subject of such provisions.

Working of Special Provisions.

The working of this plan may be illustrated by referring to a few common cases. Covenants between landlord and tenant, and mortgagor and mortgagee, by way of special provision, would create the same relative obligations, enforceable in a court of justice, as covenants in leases and mortgages do now. Provisoes for re-entry by a landlord for breach of covenant, assignment without licence, or non-payment of rent would enable the landlord to determine the tenancy by an action, but the functions of the registrar would be confined to giving effect to the judgment obtained in such an action. The practical operation of a proviso for re-entry under the present law is precisely similar. If the tenant does not voluntarily submit, an ejectment must be resorted to. A voluntary surrender by a tenant having no defence to the action would be as practicable under the proposed as under the present system. Covenants for renewal and the stipulations sometimes inserted in leases, enabling the lessee to purchase the lessor's estate would be enforceable in equity at the proper time, and would meanwhile attach to the land as incidents to the

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subsisting derivative interest, but would not be the foundation of any act of the registrar. A mortgagee with power of sale, which, as already mentioned, would be given by the prescribed form, and therefore come within the cognizance of the registrar, could sell and transfer by means of the register at any time after the day of redemption, and special provisions requiring previous notice to be given to the mortgagor, or otherwise restricting the power of sale, would not be noticed by the registrar. The mortgagor would have his remedy against the mortgagee for disregarding such provisions, but the sale would not be prejudiced. This is precisely the state of things sought to be established at present by every well-drawn mortgage.

I will not carry these illustrations further, but a more detailed examination would clearly show how readily all that concerns the functions of the registry office, with reference to a derivative interest, may be reduced to a few simple heads, and how clear and capable of being permanently maintained, is the distinction between these particulars and the other incidents of the estate.

Mortgage powers of leasing.

The creation of powers of leasing upon a mortgage, which is often convenient to the parties, is usually accompanied by restrictions from which mortgage powers of sale are carefully exempted. With a view to these restrictions, which could not be dealt with by the registrar, I propose to provide for the creation of mortgage powers of leasing by means of expedients which will be explained hereafter in connexion with the subject of powers of leasing for the purposes of settlements.

Trusts not to be created by special provisions.

It might be proper to provide that special provisions should not be efficacious for the creation of any trust or obligation in favour of third parties.

Application of principle of special provisions to derivative interests created under present system of conveyancing.

I think the principle involved in the employment of special provisions would afford peculiar facilities for engrafting on a registration of titles, at its introduction, derivative interests created under the present system of conveyancing. Leases for long terms and other existing derivative interests must continue material to the ownership of land for a very considerable time. The form of the instruments creating many of these interests would present many obstacles to their direct incorporation into a register of titles, but there would be less difficulty in bringing them into a relation to the register analogous to that in which I have proposed that special provisions shall be placed.

Description of subject-matter of miscellaneous rights to form part of special provisions.

Many of the interests in land derivative in respect of the subject-matter which I have classed under the head of Miscellaneous Rights would require for their definition verbal descriptions of some length and complexity. Wayleaves and licences connected with the working of mines may be mentioned as instances. I should propose with regard to miscellaneous rights that the description of the subject-matter should form part of the special provisions of the instrument creating them, and that the registrar should not know or classify such subject-matter further than as coming under the head of miscellaneous rights.

Subject-matter of other interests derivative as to subject-matter to be specified within prescribed form.

The description of the subject-matter of other classes of interests derivative in respect of the subject-matter would be simple. The amount of a rent and the species of minerals included in a grant of minerals could be readily specified within the limits of a printed form.

For the purpose of giving effect to instruments creating derivative interests, it would be the duty of the registrar to ascertain the regularity of such instruments with reference to the duration of the interest created, and, so far as lay within his cognizance, the subject-matter of such interest. Subject to the provisions already suggested with reference to wrongful changes of ownership, the admission to the register of an interest derived out of the fee would be conclusive as to its validity. But the sufficiency of a sub-derivative interest might in part depend on the special provisions manifesting or controlling the incidents or power of disposition, or in the case of miscellaneous rights the subject-matter of the interest from which it was derived, and to this extent persons dealing with sub-derivative interests would have to inquire for themselves, and be exposed to proceedings in a court of justice for correcting any irregularity in the creation of such interests.

Sufficiency of sub-derivative interests so far as they depend on special provisions of derivative interests must be ascertained by parties.

Postponement of derivative interests.

Derivative interests are often created by the owner of an estate with the concurrence of owners of derivative interests already carved out of it, which are thus postponed to the interest newly created. I should propose that interests should continue capable of being thus created, and that such an interest should be treated by the registrars as derived out of the first-mentioned estate, and as having priority over the derivative interests whose owners concur in its

creation. This priority, however, could not be permitted to prejudice existing sub-derivative interests without the concurrence of their owners. Nor could it be permitted, without confusion, that the owner of the first of two subsisting derivative interests should, without the concurrence of the owner of the second, give priority to the third interest newly created, and yet retain priority over the second interest, which must itself remain prior to the third.

Sub-derivative interests not to be created in mortgages.

Sub-derivative interests could not be created in mortgages by act of the parties unless a mortgage of a mortgage were permitted; but such a transaction might probably be left to be effected, in the few cases in which it is resorted to, by an absolute transfer on the register accompanied by an agreement *in pais* establishing a right to redeem, to which effect could be given in equity.

Creation of derivative interests.

I propose that derivative interests may be created by leases, grants, and mortgages.

By leases.

I use the word Lease in its popular, and not its technical sense, to signify a derivative interest involving the relationship of landlord and tenant; and I propose that that relationship shall be taken to exist when, on the creation of an interest for life or years, either in land or any other subject-matter capable of disposition on the register, any rent or royalty in money or kind shall be reserved or made payable.

By grants.

Grants would apply to the creation of any interest in fee, in mines, rents, or miscellaneous rights, and to the creation, where no rent or royalty is reserved, of interests for life or years in any subject-matter capable of disposition on the register. The disposition of a presentation by the owner of an advowson would also be effected by grant.

By mortgages.

The sense in which the word Mortgage is used can be best explained by referring to the observations as to this species of derivative interest contained in a former page. Forms of mortgages applicable to loans of stock could be employed when required. Bankers' mortgages would be in the form of a mortgage for the whole amount recoverable, with a special provision explanatory of the actual character of the transaction.

Creation of derivative interests by will.

If land is to continue to be directly disposed of by devise, the creation by will of derivative interests must be permitted to be effected by means of appropriate forms of testamentary disposition. For the purpose of enabling pecuniary charges on land constituting registered interests to be given by will, I shall include a mortgage amongst the interests capable of being thus created.

Creation of derivative interests by operation of law.

Estates by marital right.

Curtesy.

Expectancy of dower.

The creation of derivative interests by operation of law may be occasioned by marriage. Marriage alone will entitle a husband to a derivative interest in every registered interest in land of the wife. Marriage followed by certain other events will entitle the husband to a derivative interest more extensive than is conferred by marriage alone in the fee-simple estates of the wife, involving a life interest by curtesy in the event of his surviving her. Lastly, marriage before 1834, coupled with the acquisition by the husband of a registered interest liable to dower, will, in the absence of any circumstance barring the right, entitle the wife to the indefeasible expectancy of dower, which I have classed amongst derivative interests.

Derivative interests not to be created by implication.

It would not be consistent with a registration of titles that derivative interests should be created by implication. Thus an alienation of a piece of land surrounded by other land of the aliening party would not itself subject such other land to a right of way to the prejudice of purchasers, though it might entitle the alienee as against the alienor to compel in equity the grant of such a right.

Application of this principle to mortgages of two estates by the same mortgagor to the same mortgagee.

On the same principle, the burden imposed by a mortgage upon an interest in land could not be increased by any distinct mortgage of other land or property made by the same mortgagor to the same mortgagee. A personal equity might indeed prevent the redemption by the original mortgagor of one such mortgage without the other, but a purchaser could not be affected by circumstances in nowise connected with the registered ownership of the land included in his purchase.

Derivative interests may be created by owners, husbands out of wife's terms, and under the Trustee Acts.

Acts creating derivative interests may be done by the owners of the interests out of which they spring, by a husband in exercise of his powers of disposition over the wife's terms, and by the Lord Chancellor or Court of Chancery under the Trustee Acts. Leases of the lands of lunatics and infants might probably be most conveniently effected in this way.

Instrument creating a derivative interest to refer to

The instrument creating a derivative interest should contain a reference to subsisting interests derived out of the same estate affecting all or part of the

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land or subject-matter affected by the interest created. When, however, the owner of a subsisting derivative interest concurred in the creation of the new derivative interest, the reference would not embrace the interest thus postponed unless there existed sub-derivative interests carved out of it which were not affected by the postponement. In such cases it could be referred to with an entry denoting its qualified postponement. In the case of a sub-derivative interest, the references would be confined to other interests derived out of the same estate.

subsisting derivative interests retaining priority.

Instruments creating derivative interests would continue to be material till the extinguishment of such interests.

Instruments creating derivative interests would, as defining such interests, continue to be material to the actual state of ownership of land until the extinguishment of the interest created. In this respect they would differ from absolute transfers; which would have effect given to them by entries on the register, and would not usually themselves form part of any information subsequently furnished concerning the state of ownership. But I have already observed that some qualification of this rule as to absolute transfer would be necessary with reference to mortgages, and to some absolute transfers effecting subdivisions of miscellaneous rights vested in individuals.

Absolute transfers of mortgages to admit of acknowledgment by mortgagor of amount due which may be subsequently referred to.

It is always convenient to the transferree of a mortgage that an acknowledgment by the mortgagor of the amount of principal and interest due at the time of the transfer should form part of the transaction, and I should propose that entries of these amounts be admitted into absolute transfers of mortgages, and that the mortgagor may be a party to a transfer containing such entries. Absolute transfers containing acknowledgments of this description must of course be connected with the mortgage by proper references; and for the purpose of giving to the mortgagee the benefit of such acknowledgments, but not in any other respect, such transfers would continue to be material until the extinguishment of the mortgage.

Absolute transfers subdividing miscellaneous rights.

It has been stated that the description of the subject-matter of miscellaneous rights must form part of the special provisions of the instrument creating them, and would be frequently of some length and complexity. A subdivision of a derivative interest consisting of miscellaneous rights might be occasioned by an absolute transfer of all the rights affecting part of the land, or of part of the rights, whether as affecting all or part of the land. The former case would involve no peculiarity, but in the latter, which would probably be of rare occurrence, a verbal description of the rights transferred would be requisite, and this description would be thenceforth material, as well with reference to the rights remaining vested in the transferror as to the rights transferred. The case is exactly similar to that which would arise with reference to the land itself upon the alienation of part of the land of any owner under a system of registration not founded upon maps, and which was proposed to be provided for by Mr. Duval, by the entry in connexion with the land remaining undisposed of, of specifications of that which had been alienated.

Must admit of special provisions, and be material during continuance of subdivision thereby effected.

I think it would be necessary, that on the absolute transfer of part only of the miscellaneous rights constituting a derivative interest (whether in respect of all or part of the land affected by such interest), it should be permitted, with a view to the verbal description of the rights transferred, that special provisions should be added to the instrument of absolute transfer. Instruments to which special provisions were thus added, would, unlike other absolute transfers, continue to be themselves material to the state of ownership of the land (as well with reference to the interest remaining vested in the transferror as to the interest transferred), until the determination of the derivative interest subdivided or of the subdivision of ownership effected by the transfer. Each distinct portion of the interest subdivided by means of such a transfer would in the meantime possess a separate character depending on the special provisions of that instrument, with which it must of course be connected on the register by appropriate references.

Subdivision of leaseholds.

Mode of providing for mutual observance of covenants.

A subdivision of leasehold property is usually accompanied by provisions for the apportionment of the rent and concerning the observance by the respective parties of the covenants of the lease. Cross powers of distress and other expedients are frequently resorted to for securing these objects. But it might probably be unnecessary to establish any exceptional provisions concerning absolute transfers effecting such subdivisions, because the mutual rights thus created would in fact constitute sub-derivative interests, and could assume that form on the register.

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Recapitulation.

The foregoing classification of acts creating derivative interests may be recapitulated as follows:—

Lease by owner.
„ husband as to wife's term.
„ order under Trustee Acts.
Grant by owner's act *inter vivos*.
„ owner's will (if no real representative).
„ husband as to wife's term.
„ order under Trustee Acts.
Mortgage by owner's act *inter vivos*.
„ owner's will (if no real representative).
„ husband as to wife's term.
„ order under Trustee Acts.
Evidence of marriage (estate by marital right).
„ marriage and further events (estate by marital right including curtesy).
„ marriage before 1834, and acquisition by husband, of registered interest liable to dower (expectancy of dower).

Forms of acts creating derivative interests.

The following forms of acts creating derivative interests represent a lease and mortgage by the owner of the fee, the creation of an estate by marital right, including curtesy and the grant by the owner of that estate of a rent for his own life, out of part of the land to which he has thus become entitled. They apply to the same land, or portions of it, affected by the absolute transfers already set forth, and are intended, together with these transfers and some forms of acts hereafter exhibited, to represent the working, under the proposed system, of a connected series of dealings with the same estate.

Special provisions.

The special provisions are such as would be employed in the commonest cases. Some of them which appear most useful for the purpose of illustration are printed in full, of others the heads only are given in the positions which they would occupy *in extenso* in practice. These heads are printed in italics.

I have thought it convenient that the particulars material with reference to stamps should be embodied as far as possible in the printed forms.

Form of mortgage.

The introduction into the form of a mortgage of a day of redemption is intended to render unnecessary the present provisoes for redemption and for quiet enjoyment until default. With a view to enable special provisions to be dispensed with altogether in the simplest transactions, it might perhaps be useful that the object of the covenant for payment should be attainable by the use of prescribed forms of mortgages imposing on the mortgagor an obligation by specialty for payment of the debt.

The creation of the estate by marital right of course refers to the record in the register office of the evidence on which it proceeds.

The use to be made of the spaces left in the schedule for entries of the extinguishment of prior derivative interests will be explained hereafter.

The distinctions between instruments creating sub-derivative interests affecting all or part only of the subject-matter of a derivative interest would be similar in principle to those already adverted to with reference to absolute transfers of all or part only of the subject-matter of a derivative interest.

CREATION of derivative interest, 21st day of April 1860, No 172.

LEASE of land for years affecting fee-simple of land by owner.

Lessor - - Lucy Monckhouse, of &c.
Lessee - - Thomas Harrington, of &c.
Term, 21 years from 25th day of March 1860.
Fine or premium, none.
Yearly rent, 150*l.*
Date of lease, 20th day of April 1860.
Signature of lessor - Lucy Monckhouse.
Witnesses to signature of lessor - { Henry Fleming, of &c., a Commissioner for administering Oaths in Chancery. / Charles Higham, of &c.
Signature of lessee - Thomas Harrington.
Witnesses to signature of lessee - { George Morley, of &c., a Commissioner, &c. / Charles Delille, of &c.

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SCHEDULE.

Land leased.					Subsisting derivative Interests having Priority.							
County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or undivided Share leased:	Nature.	Date of Registry.	No.	Extinguished.	Nature.	Date of Registry.	No.	Extinguished.
Hants	24	1442	Field	Entirety.								
,,	,,	1443	,,	,,								
,,	,,	1444	House & Offices.	,,								
,,	,,	1562	Field	,,								
,,	,,	1563	,,	,,								
,,	,,	1564	,,	,,								

SPECIAL PROVISIONS.

1. Thomas Harrington hereby for himself, his heirs, executors, and administrators, covenants with Lucy Monckhouse, her heirs and assigns, that the said Thomas Harrington, his executors, administrators, or assigns, will at all times during the term hereby created pay, without any deduction, to the said Lucy Monckhouse, her heirs or assigns, the above-mentioned yearly rent by equal half-yearly payments, on the 29th day of September and the 25th day of March in every year.

2. *Covenant by lessee to pay taxes and to pay a penal rent for ploughing pasture and misusing arable land.*

3. *Covenant by lessee that lessor shall have ingress to sport and to fell timber, work mines, take away trees and produce of mines, &c.*

4. *Covenant by lessee to repair buildings and yield up in good condition.*

5. *Covenants by lessee as to management of land and course of husbandry.*

6. It is hereby provided that in case any rent hereby covenanted to be paid, or any part thereof, shall be unpaid for thirty days next after any day whereon the same is hereby covenanted to be paid (the same being lawfully demanded during, or at any time after, such thirty days, and not paid on such demand) or in case breach shall be made in any of the covenants in these presents contained, and on the part of the said Thomas Harrington, his executors, administrators, or assigns, to be observed or performed, it shall be lawful for the said Lucy Monckhouse, her heirs or assigns, into and upon the premises comprised in this lease to re-enter and the same to have again, as in her or their former estate, and from thenceforth the term hereby granted shall absolutely cease.

7. *Covenant by lessor to find materials for repairs, and to rebuild in case of fire.*

CREATION of derivative interest, 12th day of May 1860, No. 174

MORTGAGE with power of sale of fee-simple of land by owner.

Mortgagor - - Lucy Monckhouse, of &c.
Mortgagee - - Richard Mansell, of &c.
Principal money secured, 2,500*l.*
Rate of interest, four per cent.
Day of redemption, 11th day of November 1860.
Half-yearly days of payment of interest until actual redemption, 11th day of November and 11th day of May.
Date of mortgage, 11th day of May 1860.
Signature of mortgagor - Lucy Monckhouse.
Witnesses to signature of mortgagor - - { George Smith, of &c., a Commissioner for administering Oaths in Chancery. / Thomas Nicholls, of &c }
Signature of mortgagee - Richard Mansell.
Witnesses to signature of mortgagee - - { Edward Freeman, of &c., a Commissioner, &c. / John Walker, of &c. }

SCHEDULE.

Land mortgaged.					Subsisting derivative Interests having Priority.							
County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or undivided Share mortgaged.	Nature.	Date of Registry.	No.	Extinguished.	Nature.	Date of Registry.	No.	Extinguished.
Hants	24	1442	Field	Entirety	Lease	21 April 1860	172					
,,	,,	1443	,,	,,	,,	,,	,,					
,,	,,	1444	House & Offices.	,,	,,	,,	,,					
,,	,,	1477	Field	Moiety No. 1.								
,,	,,	1480	,,	,,								
,,	,,	1565	Cottage and Garden	Entirety								
,,	25	329	Field	,,								
,,	,,	330	,,	,,								

SPECIAL PROVISIONS.

1. Lucy Monckhouse hereby, for herself, her heirs, executors, and administrators, covenants with Richard Mansell, his executors, administrators, and assigns, that the said Lucy Monckhouse, her heirs, executors, administrators, or assigns, will on the 11th day of November 1860, pay, without any deduction, to the said Richard Mansell, his executors, administrators, or assigns, the sum of 2,500*l.* of lawful British money, with interest thereon at the rate of four per cent. per annum from the day of the date of these presents. And further, that in case the said sum of 2,500*l.* shall not be paid on the said 11th day of November 1860 the said Lucy Monckhouse, her heirs, executors, administrators, or assigns, will thenceforth so long as the said sum of 2,500*l.*, or any part thereof, shall remain owing on the security of these presents, pay, without any deduction, except income tax, to the said Richard Mansell, his executors, administrators, or assigns, interest at the rate of four per cent. per annum on the said sum of 2,500*l.*, or on so much thereof as shall for the time being remain owing, by equal half-yearly payments on the 11th day of November and the 11th day of May in every year.

2. In case, and so often as during the continuance of this security, the said Lucy Monckhouse, her executors, administrators, or assigns, shall pay to the said Richard Mansell, his executors, administrators, or assigns, half a year's interest for the said sum of 2,500*l.*, or so much thereof as shall remain owing, after the rate of three and a half per cent. per annum, on the 11th day of November and the 11th day of May, or within the space of thirty days next after each of the said days respectively, the said Richard Mansell, his executors, administrators, or assigns, shall accept interest for the said sum of 2,500*l.*, or such part thereof as shall remain owing, after the rate of three and a half per cent. per annum for every half year for which such interest shall be paid at or within the time aforesaid; but the acceptance of interest at a less rate than four per cent. per annum for any half year or half years for which the interest shall not be paid till after the expiration of such thirty days as aforesaid, shall not be a waiver of the right to require payment of interest at the rate of four per cent. per annum for any subsequent half year or half years for which the interest shall not be paid before the expiration of such thirty days as aforesaid.

3. Richard Mansell hereby, for himself, his heirs, executors, and administrators, covenants with Lucy Monckhouse, her heirs and assigns, that the power of sale created by this security shall not be exercised unless and until the said Richard Mansell, his executors, administrators, or assigns, shall have given to, or left at, the usual or last known place of abode in England of the said Lucy Monckhouse, her heirs or assigns, or some or one of them, a notice in writing of the intention of the person or persons giving or leaving such notice to exercise the said power of sale, unless all monies to be owing on the security of these presents shall be paid off at, or previously to, the expiration of six calendar months from the time when such notice shall have been given or left, and unless and until default shall have been made in payment of such monies, or some part thereof, for such six calendar months as aforesaid.

CREATION of derivative interest, 29th day of June 1869, No. 29.

CREATION of Estate by marital right, including curtesy, affecting fee-simple of land.

Owner from whose marriage estate by marital right arises } Lucy Watson, of &c., wife of Thomas Watson, of &c., formerly Lucy Monckhouse, spinster.

Person acquiring estate by marital right - - } Thomas Watson, of &c.

See Entry of evidence in Record of evidence of events affecting the ownership of land, 17th day of June, 1869, No. 16.

Date of instrument, 27th day of June 1869.

Signature of person acquiring estate by marital right - } Thomas Watson.

Witnesses to signature { Edward Whitehouse, of &c., a Commissioner, &c.
William Redmond, of &c.

SCHEDULE.

Land affected.					Subsisting derivative Interests having Priority.							
County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or Undivided Share affected.	Nature.	Date of Registry.	No.	Extinguished.	Nature.	Date of Registry.	No.	Extinguished.
Hants	24	1442	Field	Entirety	Lease	21 April 1860	172		Mortgage.	13 May 1860	928	
"	"	1443	"	"	"	"	"		"	"	"	
"	"	1444	House & Offices.	"	"	"	"		"	"	"	
"	"	1477	Field	Moiety No. 1.					"	"	"	
"	"	1480	"	"					"	"	"	
"	"	1562	"	Entirety	Lease	21 April 1860	172					
"	"	1563	"	"	"	"	"					
"	"	1564	"	"	"	"	"					
"	"	1565	Cottage and Garden.	"					Mortgage.	13 May 1860	928	
"	25	329	Field	"					"	"	"	
"	"	330	"	"					"	"	"	

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CREATION of derivative interest, 10th day of November, 1871, No. 314.

GRANT of Rent for life out of Estate by marital right, including curtesy, affecting fee-simple of land, under creation of 29th day of June 1869, No. 29, as to PART.

Grantor - - Thomas Watson, of &c.
Grantee - - Henry Reed, of &c.
Amount of yearly rent, 20*l.*
Half-yearly days of payment of rent during its continuance, 3rd day of May and 3rd day of November.
Life for which rent is granted, Thomas Watson the grantor.
Consideration in money, 200*l.*
Date of grant, 3rd day of November 1871.
Signature of grantor - Thomas Watson.
Witnesses to signature of grantor - { George Wilkinson, of &c., a Commissioner, &c. / Edward Ward, of &c.
Signature of grantee - Henry Reed.
Witnesses to signature of grantee - { George Wilkinson, of &c., a Commissioner, &c. / Edward Ward, of &c.

SCHEDULE.

Land affected.					Subsisting derivative Interests having Priority.							
County.	No. of Sheet of Map.	No. on Map.	Description.	Entirety or Undivided Share affected.	Nature.	Date of Registry.	No.	Extinguished.	Nature.	Date of Registry.	No.	Extinguished.
Hants	24	1442	Field	Entirety.								
	„	1443	„	„								
	„	1444	House & Offices	„								
	„	1562	Field	„								
	„	1563	„	„								
	„	1564	„	„								

SPECIAL PROVISIONS.

1. *Covenant by Thomas Watson for payment of the yearly rent granted.*
2. And it is hereby declared, that in case the said yearly rent of 20*l.* hereby granted, or any part thereof, shall at any time or times be in arrear and unpaid by the space of forty days next after any of the days appointed for the payment thereof, then and so often it shall be lawful for the said Henry Reed and his assigns to enter into and upon, and to hold the hereditaments hereby affected with the payment of the said rent, or any part thereof, and to receive and take the rents and profits thereof to his and their own use, until he and they shall therewith and thereby, or otherwise, be fully paid and satisfied the said yearly rent of 20*l.*, and the arrears thereof, due at the time of such entry, or afterwards to become due during his or their being in possession of the said premises, together with all costs, charges, and expenses which he or they shall sustain by reason of the nonpayment thereof.

Class III. Modifications of derivative interests.

The third class of acts affecting the ownership of land consists of modifications of derivative interests. The necessity of enabling subsisting derivative interests to be modified as between the owners of such interests and of the interests out of which they are derived is sufficiently obvious. Such modifications are practically very frequent with reference to mortgages, and not uncommon with reference to leases.

In particulars embodied in prescribed forms or by special provisions.

A modification may affect the derivative interest in particulars material to be known to the registrars, or in particulars which are properly the subject of special provisions. Modifications of the former kind, which would be few in number, would require to be effected by appropriate prescribed forms of instruments to which of course special provisions could be added when it was desired at the same time to effect modifications of the second description. Instruments for effecting modifications of the latter kind only would be confined to a reference to the interest intended to be modified and the application to such interest of the special provisions for effecting the intended modifications.

Renewal of lease.

It would be convenient in many cases that the renewal of a lease, especially if compulsory, should assume the form of an extension of the subsisting interest

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rather than the creation of a new one. I should propose that such an act should constitute a species of modification of a derivative interest, for which, of course, a prescribed form of instrument would be necessary. The doctrine of implied surrender and the statutory provisions with reference to the renewal of leases during the existence of underleases, which are not well adapted to a registration of titles, would thus be got rid of. The provisions of the lease would continue in force subject to any modifications accompanying or caused by the renewal. Sub-derivative interests would remain undisturbed, and so far as their nature required would attach to the enlarged interest arising from the renewal. It would of course be practicable, where circumstances made it more desirable, to extinguish an existing lease and create a new one.

Further charges and concession and extinction of mortgage powers of sale.

Modifications of mortgages by means of prescribed forms of instruments would be requisite for the purpose of further charges, of giving powers of sale, and of extinguishing any such powers already given by the mortgage. It would often be more convenient to increase the sum secured by a subsisting mortgage than to put upon the register a fresh independent mortgage to an existing mortgagee. Forms of instruments enabling more than one of these objects to be effected at the same time would of course be requisite.

Modifications by special provisions.

Other modifications by the act of the parties would be confined to particulars which would be the subject of special provisions. Any incident which might have been attached to a derivative interest by this means on its creation could be attached to it by an instrument of modification.

Curtesy.

When effect has been given on the register to the derivative interest, founded on marriage only, of a husband in his wife's estate in fee, the occurrence of such further events as entitle the husband to an estate by curtesy will enable effect to be given as a modification by operation of law to this enlargement of the husband's derivative interest.

Modifications may be effected under Trustee Acts.

A renewal of a lease, or any other modification, might, under proper circumstances, be effected by means of the Trustee Acts.

Priority of modifications.

The modification of a derivative interest would be subject as regards priority to other subsisting derivative interests and modifications, and should contain a specification of any such interests or modifications, which, as regards priority, intervene between the modification and the interest to which it relates. The owners of derivative interests could of course join in a modification for the purpose of waiving their priority, and upon the compulsory renewal of a lease they might be compellable to do so.

Effect as to sub-derivative interests.

Sub-derivative interests would not be bound by modifications restricting the interests out of which they are derived except by the concurrence of the persons entitled to them.

A modification may have reference to part only of the land or other subject-matter of the interest modified.

Modifications of derivative interests would be connected with the instruments by which such interests were created, and would continue to be material to the actual state of ownership of the land until the extinguishment of such interests.

Recapitulation.

The foregoing classification of modifications of derivative interests may be recapitulated as follows:—

- Renewal of lease
- Further charge
- Concession of power of sale to mortgagee
- Extinction of mortgagee's power of sale
- Modification by special provision

} By owners of interests affected, by husband as to wife's term, and by orders under the Trustee Acts.

- Evidence of events enlarging estate by marital right by entitling husband to curtesy.

Form of modifications.

For the purpose of illustration, the form of a further charge upon the mortgage exhibited in a former page is here set forth. The further charge is accompanied by special provisions embodying some stipulations common on such transactions.

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MODIFICATION of derivative interest 12th day of November 1864, No. 149.

FURTHER CHARGE on Mortgage of fee-simple of land of 12th day of May 1860, No. 174, as to ALL land.

Mortgagor - - Lucy Monckhouse, of &c.
Mortgagee - - Richard Mansell, of &c.
Further principal money secured, 500*l.*
Day for payment thereof, 11th day of May 1865.
Rate of interest thereon, four per cent.
Half-yearly days of payment of interest thereon, 11th day of May and 11th day of November.
Date of further charge, 11th day of November 1864.
Signature of mortgagor - Lucy Monckhouse.
Witnesses to signature of mortgagor { Philip Britton, of &c., a Commissioner, &c. / Robert Jackson of &c.
Signature of mortgagee - Richard Mansell.
Witnesses to signature of mortgagee { William Burke, of &c., a Commissioner, &c. / James Pitt, of &c.

SPECIAL PROVISIONS.

1. *Covenant by Mortgagor for Payment of further advance and the interest thereof.*

2. The provisions contained in the above-mentioned mortgage of the 12th day of May, 1860, No. 174., concerning the reduction of the interest of the principal sum of 2,500*l.*, thereby secured on such punctual payment thereof as therein mentioned shall apply to the interest of the principal sum of 500*l.* hereby secured in the same manner as if such provisions were herein repeated with reference to the interest of the said last-mentioned sum.

3. In case Lucy Monckhouse, her executors, administrators, or assigns, shall, during the term of five years from the date of these presents, well and truly pay unto Richard Mansell, his executors, administrators, or assigns, the interest on as well the said sum of 2,500*l.* secured by the said mortgage as on the said sum of 500*l.* secured by these presents, by equal half-yearly payments on the 11th day of May and the 11th day of November in every year, or within thirty days next after every of the said days respectively, the said Richard Mansell, his executors, administrators, or assigns, shall not call in or compel payment of the said principal sums of 2,500*l.* and 500*l.*, or either of them or any part thereof respectively, nor take any proceeding for that purpose until the expiration of the said term of five years; but if default shall at any time be made in payment of the said interest within the time aforesaid, then and at any time thereafter, and notwithstanding any subsequent acceptance of interest, the said Richard Mansell, his executors, administrators, or assigns, may call in and compel payment of the whole of the principal monies and interest by the said mortgage and by these presents secured, and take any such proceedings for that purpose or for selling or foreclosing the equity of redemption of the premises comprised in this security as they or he shall think proper. Provided always, that it shall not be lawful for the said Lucy Monckhouse, her executors, administrators, or assigns, at any time before the expiration of the said term of five years to compel the said Richard Mansell, his executors, administrators, or assigns, to receive payment of the said sums of 2,500*l.* or 500*l.*, or either of them, or any part thereof respectively, but the said sums shall, unless the said Richard Mansell, his executors, administrators, or assigns, shall, upon such default as aforesaid, call in or compel payment thereof, continue at interest for the said term of five years upon the security of the said mortgage and of these presents.

Class IV. Extinguishment of derivative interests.

I now come to the fourth class of acts affecting the ownership of land, viz. the extinguishment of derivative interests.

By determination.

Derivative interests would be extinguished by determination. Estates for lives, years, and years determinable on lives, would determine by effluxion of time and the dropping of lives; presentations to livings by actual presentment; estates by marital right by the determination of the coverture, except in cases involving curtesy, and then by the death of the husband; and expectancy of dower by the death of the expectant dowress. It would be competent for any person, interested in procuring the extinguishment on the register of the interest determined, to produce the requisite evidence, and give notice to other parties interested. If the derivative interest determined was a rent, the existence of an arrear might entitle its owner, by proceeding in equity or otherwise, to prevent its extinguishment on the register. A right of renewal of a determined lease would have the same effect. But, in the absence of any obstacle of this kind, the extinguishment by determination would be founded on the requisite evidence and notices. It might be convenient to authorize the reception by the office of evidence of the partial determination caused by the dropping of one of several lives for which a derivative interest was held. The determination of a derivative interest would of course involve the determination of every sub-derivative interest carved out of it.

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By foreclosure and by sale under powers of mortgage.

Foreclosure by a mortgagee, and a sale under the powers of a mortgage would extinguish the mortgage itself, and all derivative interests over which the mortgage had priority. In the case of a foreclosure, the extinguishment would be founded on the decree. In the case of a sale, it would be requisite to enable the mortgagee to require entries having that effect to be made by the registrar as part of the means of carrying the sale into effect. It often happens, however, that a lease, or other disposition by the mortgagor, is acquiesced in by the purchaser from the mortgagee. A purchaser thus acquiescing might omit to procure the extinguishment of the derivative interest on the completion of the sale; in which case he would not be entitled to extinguish it at any future period.

By absolute transfer by husband of wife's term or mortgage.

An absolute transfer by a husband of the wife's term or mortgage during the coverture, whether by deed or by the effect of bankruptcy or the like, would extinguish the estate of the husband by marital right.

As to Merger.

If the present doctrine of merger, or of the analogous extinguishment of estates, which is for the most part independent of intention, is to affect registered interests in land, its application must be the result of inferences to be drawn by the registrar from the state of the registered ownership. But the law of merger is too obscure, and in some points (especially as regards the estates of husband and wife) too uncertain, to be thus applied. Moreover, there are cases where a Court of Equity will undo the effect of a legal merger, and it is obviously undesirable in such cases that merger should occur at all.

Extinguishment by surrender.

I propose that derivative interests should not be extinguished by merger independent of intention, and that the intentional extinguishment of such an interest by the person entitled to it should be effected by an appropriate form of instrument, not depending for its operation on the doctrine of merger, which I will term a Surrender. If, upon the union in the same person of two interests in land, or for any other reason, it should be desired to extinguish a derivative interest, a surrender would be requisite. If a lessor bought the interest of the lessee, the latter would surrender. If the lessee bought the interest of the lessor, he could extinguish the leasehold interest by a surrender, which could either accompany the absolute transfer from the lessor, or be resorted to at any subsequent time. It would be practicable when desired, that interests in land united in the same person should remain distinct: thus, an owner of the fee acquiring a leasehold interest by an instrument of absolute transfer, would have two separate interests in the land. It may be observed, that as an identification of the interest affected would form part of every instrument affecting the ownership of land, this double ownership would involve no confusion as regards the dispositions of the owner.

By whom surrender must be executed.

The extinguishment of a derivative interest is in general beneficial, or, at least, not hurtful to the owners of other interests in the land. Except in the cases I am about to mention, I should propose that effect should be given on the register, without reference to the intervention or existence of other derivative interests, to surrenders executed by the owners of the derivative interest surrendered, and of the estate out of which such interest is derived.

Surrenders of leases.

In the case of a lease, however, the existence of the derivative interest is not usually purely onerous, and is often quite the reverse. The extinguishment of a lease at a rack rent to a solvent tenant might be very detrimental to other derivative interests, especially to mortgages. I should propose that surrenders of leases should require to be assented to, not only by the owner of the estate out of which the lease is derived, but by the owner of other subsisting interests derived out of the same estate.

Surrenders of rents and mortgages as to part.

I think it would be convenient to permit the surrender of a rent with reference to part only of the land affected by it, and that thereupon the remainder of the land should continue burdened with the whole of the rent. But as such a surrender would be prejudicial to the remainder of the land, it would be proper that it should require the assent of every person having an interest subject to the rent in such remaining land. The surrender of a mortgage as to part only of the subject-matter affected by it, would fall within the same principle, and require to be similarly assented to.

Surrenders of derivative interests subject to sub-derivative interests.

It would not be consistent with the proposed plan of registration, or with the system of indexing and notation hereafter explained for connecting together upon the register the various interests subsisting in each parcel of land, that sub-derivative interests should attach themselves upon the extinguishment of

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the derivative interest to the estate out of which it was derived. A derivative interest, subject to subsisting sub-derivative interests, could not, therefore, be surrendered except upon the surrender of every such sub-derivative interest. Where the sub-derivative interests were not surrendered, the union of the ownership of the derivative interest, and of the estate out of which it is derived, must be effected by absolute transfer, and during the continuance of any sub-derivative interest, the two interests thus united in the same owner must remain distinct.

Questions between real and personal representatives.

It might be convenient, as well with reference to the case last referred to as to others frequently occurring in practice, that upon the introduction of a registration of titles, rules should be adopted calculated to prevent the contests between real and personal representatives which frequently happen where a deceased person has acquired either in his own name, or in that of a trustee, more than one interest in the same parcel of land.

Surrender by will.

If land is to continue to be directly disposed of by devise, the surrender of derivative interests by appropriate forms of testamentary disposition must be admitted, subject of course in every case to the procurement, after the testator's death, of the same assents as would have been requisite for the like surrender by act *inter vivos*.

By orders under the Trustee Acts.

Derivative interests would also be capable of being surrendered by orders under the Trustee Acts.

As to estates by marital right.

Derivative interests by marital right could not be surrendered during the coverture, in consequence of the incapacity of the wife to assent to such an act.

Judicial extinguishment of derivative interests.

Derivative interests would be capable of being judicially extinguished. Judgments having that effect would be obtainable for giving effect to adverse possession, as against the owner of a derivative interest, to forfeiture of an expectancy of dower by elopement, to forfeiture for waste, and to the cesser of a derivative interest or the accruer of a right of re-entry under the special provisions of the instrument creating or modifying such interest. Divorce *à vinculo matrimonii* would be capable of judicially extinguishing estates by marital right and expectancies of dower. The statutory provisions under which leases may be surrendered on the bankruptcy of the lessee and the non-acceptance of the lease by the assignees, and under which leases may be determined by the intervention of Justices of the Peace upon the desertion of the premises by the tenant, would require to be adapted to a registration of titles, and leases would be capable of being judicially extinguished under the altered machinery thus established.

Effect of existence of sub-derivative interests on judicial extinguishment.

In most of the cases above enumerated it would be proper that any sub-derivative interest which might affect the interest judicially extinguished should share the fate of that interest. But there would sometimes exist sub-derivative interests which ought not to be prejudiced. In these cases the derivative interest could not, for the reasons already stated with reference to partial surrenders, be judicially extinguished, but must be vested by absolute transfer by order under the Trustee Acts, or otherwise, as a distinct interest in the person for whose benefit the extinguishment would have enured if no sub-derivative interest had existed.

Instrument wholly extinguishing derivative interest would not admit of special provisions.

No instrument by which a derivative interest is wholly extinguished would admit of special provisions. The effect of such an instrument would be that the derivative interest and its modifications, if any, would entirely disappear from the manifestation of ownership afforded by the register. The references to the derivative interest in the land index and elsewhere, hereafter to be referred to, would be annulled by entries denoting its extinguishment, and no subsequent certificate of ownership furnished by the registry office would show that it had ever existed. It would be consistent with this result that any personal liability subsisting under a covenant or stipulation by way of special provision or otherwise, in respect of an extinguished derivative interest, should continue in force.

Effect of a total extinguishment.

Partial extinguishment of a derivative interest.

The extinguishment of a derivative interest as to part of the land affected by it, or in the case of minerals, rents, or miscellaneous rights as to part of the derivative subject-matter, would stand on a somewhat different footing. Such partial extinguishments might be occasioned by foreclosure or sale by a mortgagee of part of the land or subject-matter comprised in any derivative interest, by an absolute transfer by a husband of part of the land or subject-matter

comprised in the wife's term, by judicial extinguishment, and lastly by a partial surrender. *Mr. Mac Donnell.*

With regard to the land which in consequence of any partial extinguishment ceased to be affected by the derivative interest, the result would be the same as if the extinguishment were total. The references connecting such land with the derivative interest would be annulled in manner before adverted to, and a complete severance of the land from the interest would follow. But the partial extinguishment of a derivative interest would not necessarily put what is left of the interest in the same state as if the subject-matter affected by the extinguishment had never been included in it. Upon the surrender of a part of the subject-matter included in a lease the rent would be apportionable. Upon the surrender of a part only of the miscellaneous rights (whether as to all or part of the land affected by them) included in a derivative interest, the verbal description of the rights surrendered would become material to the ascertainment of the rights continuing to subsist, in the same way as has been already pointed out with reference to the subdivision of such rights by absolute transfer. In these and other similar respects the partial extinguishment of a derivative interest would partake of the character of a modification of that part of the interest left subsisting, and it is at present not uncommon in practice for direct stipulations between the surrenderor and the surrenderee, affecting the incidents and enjoyments of such remaining part, to accompany a partial surrender.

Instruments effecting partial surrenders to be material to ownership of residue and admit of special provisions.

I propose that instruments partially extinguishing derivative interests be connected on the register, as material to the actual ownership, with the instruments creating such interests; and that persons subsequently dealing with the remaining portion of a derivative interest partially extinguished, must, in ascertaining its incidents, have regard to the occurrence and consequences of the partial extinguishment. It would be convenient with reference to the apportionment of rent, and on other grounds, and necessary with reference to surrenders of part only of the miscellaneous rights constituting a derivative interest, that the addition of special provisions to a surrender of part only of a derivative interest should be permitted.

Recapitulation.

The foregoing classification of acts causing the extinguishment of derivative interests, may be recapitulated as follows:—

Determination.
Foreclosure } As to mortgage and derivative interests
Sale under powers of mortgage } over which mortgage has priority.
Absolute transfer by husband of wife's term or mortgage (as to estate by marital right).
Surrender by owner.
„ „ husband of wife's term or mortgage.
„ „ order under the Trustee Acts.
Judicial extinguishment on adverse possession.
„ „ „ forfeiture of dower by elopement.
„ „ „ forfeiture for waste.
„ „ „ cesser of estate, or accruer of right of re-entry under special provisions.
„ „ „ divorce *à vinculo matrimonii*.
„ „ „ bankruptcy of lessee.
„ „ „ desertion of premises by tenant.

Forms of acts of extinguishment.

The following forms of acts causing the extinguishment of derivative interests represent the determination by death of the estate by marital right, including curtesy, and the surrender of the mortgage, which have respectively been the subject of several previous forms. The determination of the estate by marital right would of course involve the extinguishment of the grant of a rent affecting that estate as a sub-derivative interest under one of the instruments already set forth.

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EXTINGUISHMENT of derivative interest **1st** day of **May**, 1878 No. **36**.

DETERMINATION of Estate by marital right including curtesy, affecting fee-simple of land, under creation of 29th day of June 1869, No. 29, as to ALL by death of person having acquired such estate.

Deceased person having acquired such estate } Thomas Watson, of &c.

Owner of fee-simple of land subject to estate determined } Lucy Watson, of &c., widow and relict of the said Thomas Watson.

See entry of evidence in record of evidence of events affecting the ownership of land, **18th** day of **April**, 1878, No. **262**.

Date of instrument, 23rd day of April 1878.

Signature of owner of fee-simple of land } Lucy Watson.

Witnesses to signature { Charles Adams, of &c., a Commissioner, &c. / James Foster, of &c.

EXTINGUISHMENT of derivative interest, **15th** day of **November**, 1878, No. **73**.

SURRENDER of Mortgage of fee-simple of land, of 12th day of May 1860, No. 174, as to ALL by owner.

Surrenderor - - Richard Mansell, of &c.

Owner of fee-simple of land subject to mortgage surrendered } Lucy Watson, of &c., widow.

Principal money paid on surrender, 3,000*l.*

Date of instrument, 11th day of November 1878.

Signature of surrenderor - Richard Mansell.

Witnesses to signature of surrenderor } Frederick Walker, of &c., a Commissioner, &c. / James Tobin, of &c.

Signature of owner of fee-simple of land } Lucy Watson.

Witnesses to signature of owner of fee-simple of land } Alexander Jordan, of &c., a Commissioner, &c. / John Harding, of &c.

Combination of acts requisite for effecting any single transaction.

It will not have escaped observation that many transactions affecting land would require for their accomplishment acts coming within more than one of the above-mentioned classes. This remark would apply to many objects now effected by reservations or exceptions which could not be made under the proposed system. A sale of land in fee, in consideration of a fee farm rent, or with the exception of the minerals, would require both an absolute transfer and the creation of a derivative interest; and a transfer of a mortgage accompanied, as often happens, by stipulations between the mortgagor and the transferree not found in the original mortgage, would require both an absolute transfer and a modification of the mortgage. Instances of this kind might be multiplied indefinitely. In every case, however, it will be found that the transaction may be resolved into acts falling strictly within the classification before laid down, and it would be on this footing that it would be carried into effect on the register. But it would not necessarily follow that so much of the transaction as fell within each separate class should require the execution of a distinct instrument. Facilities could be given for combining together the number of forms requisite for accomplishing any transaction, and such a combination could be regarded with reference to stamps and signatures as a single act.

Dispositions affecting more than one registered interest in land.

An analogous principle might be adopted with reference to leases, and other dispositions by tenants in common, and possibly to leases of both freeholds and leaseholds, and some other dispositions affecting more than one registered interest in land. Dispositions of this kind might be permitted to be accomplished by a single act with such references to every separate interest affected as would enable each of them to be connected with the disposition in the same manner as if it had been the only interest thereby affected.

Some minor proceedings affecting the ownership or power of disposition of interests in land remain to be referred to.

Deaths of joint tenants and joint executors.

An entry denoting the death of a joint tenant of any registered interest would, upon proper evidence, be made against his name, and the registered ownership would thereupon devolve on the surviving tenants or tenant jointly, or in severalty, as the case might require. The same practice would be followed on the death of one of several joint executors.

Disclaimers.

Disclaimers could be requisite under the proposed system only in case registered interests in land were devisable by will. Upon the deposit in the register office of a testamentary act, evidence of the death of any devisee in the testator's lifetime, and the disclaimer by a proper form of instrument of any living devisee would be admissible. It might also be requisite that the neglect of a devisee, after due notice and opportunity to perform the acts requisite to perfect his title on the register, should be deemed a virtual disclaimer. The death of a devisee having survived the testator, but not having either perfected his title or disclaimed, would enure to the benefit of the persons to whom his interest would have been transmissible by operation of law in case his title had been perfected.

Lis pendens.

The entry of a *lis pendens* must, of course, for the purpose of binding a purchaser under a registration of titles, be directly connected with the registered interest affected by the litigation. I should propose that such entries be admissible on the register with reference to every proceeding by means of which the ownership of land may be capable of being judicially or quasi-judicially affected. Such a rule would embrace, not only proceedings in the Courts of Law and Equity and the Ecclesiastical Courts, but in bankruptcy and insolvency, inquisitions with reference to aliens, criminal proceedings leading to attainder, and other less important proceedings. I think the total abolition of the doctrine by which judicial changes of ownership take relation back to antecedent events, which is indispensable to a registration of titles, would require to be counterbalanced in this way. But for the purpose of confining entries of *lis pendens* to cases properly calling for them, I should propose that every such entry be made by leave of, and should be removable by the Court or judicature where the proceedings are pending. The proceeding which I have suggested for the purpose of obtaining the benefit of a judgment out of an interest in land would constitute a *lis pendens*. An entry of *lis pendens* would not prevent a disposition on the register, but would subject every such disposition to the result and consequences of the litigation.

Injunctions.

The jurisdiction by injunction of Courts of Equity would, of course, be applicable to the disposition, by means of the register, of interests in land; and I think it might deserve consideration whether a jurisdiction to restrain by injunction the disposition of a registered interest pending a litigation, ought not to accompany every jurisdiction by which the ownership of that interest may be affected.

Prevention of dispositions by persons under disabilities.

With a view to the prevention of dispositions by persons under personal disabilities, means would be requisite for bringing such disabilities within the cognizance of the registrar.

Entries of infancy or coverture.

The acquisition of registered interests by infants would seldom take place, unless descents came within the scope of the register. The evidence in cases of descent would show the age of the heir, and his infancy would make it requisite that the instrument for perfecting the change of ownership should be executed by his guardian. Regard could be had by the registrar to these circumstances on any subsequent disposition by the heir. The coverture of a female owner would generally be made apparent by the admission to the register of the husband's estate by marital right. At the same time, however, dispositions by act *inter vivos*, in favour of infants, might occasionally take place, and, as the disability of a married woman operates for her own protection as well as for the benefit of her husband, the performance by the husband of an act which he may possibly omit ought not to be the only means by which the full effect of such a disability may be secured. I should therefore propose that an entry of the infancy or coverture of the owner of a registered interest in land should be made against the name of such owner on the application of any person upon proper notice and supported by evidence of the nonage of an infant, or the coverture of a woman whose husband's estate by marital right is not

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upon the register. Such an entry would of course be subject to removal upon evidence of the cessation of the disability.

Entry founded on proceedings in lunacy.

Lunacy and other forms of mental disability occurring to the owner of a registered interest would not in the majority of cases necessarily involve any consequences bringing them to the knowledge of the registrar. I should propose that upon any proceeding with reference to the owner of any registered interest in land, alleged to labour under mental disability, whether by way of inquisition before a jury or under recent statutes dispensing with such an inquiry, it should be competent to the Lord Chancellor or Master in Lunacy to order an entry suspending the power of disposition of such owner to be put upon the register. It might be useful that there should be a discretion to order this entry without awaiting the result of the inquiry. The entry would be removable by order of the jurisdiction by which it had been directed to be made.

Summary of precautions against dispositions by persons under disabilities.

It may be remembered that I have proposed to impose on a purchaser the necessity of ascertaining, at his peril, the authenticity and regularity of the actual transfer to himself, and that purchasers accepting transfers from persons under disabilities, and volunteers claiming under them, should be compellable to retransfer the interests thus acquired. I have also suggested that it should be incumbent on solicitors attesting the execution of instruments to satisfy themselves by inquiry as to the freedom from personal disabilities of the persons whose signatures they attested. Coupling these obligations with the expedients for preventing dispositions by persons under disabilities just explained I think the protection of such persons would be sufficiently provided for.

Executory contracts.

Executory contracts with reference to the ownership of land must always be frequent. The immediate completion of a purchase of land may be prevented not only by the delays now attending investigations of title, but by the necessity of raising the purchase money by converting other investments and in other obvious ways. The facility which would attend the actual transfer of land under a registration of titles would render the position of a purchaser having only an executory contract *in pais* to rely on much less secure than at present. On the other hand, the vendor's lien would necessarily be much restricted by such a system, and the risk which he would run by transferring the registered interest before the completion of the transaction proportionably increased.

Proposed disabling act for protection thereof.

An expedient for the protection of the rights of parties to executory contracts not admitted to the register, which, under the name of a Caveat, was suggested by the Real Property Commissioners, and approved by the Registration Commissioners with reference to a registration of assurances, might, I think, with some modifications suitable to a registration of titles, be usefully adopted. Following the principle of this expedient, I should propose to enable the execution by the owner of a registered interest of a form of instrument admissible to the register, disabling himself and persons claiming under him from disposing of such interest by act *inter vivos* within a given period, except to or by direction of the person in whose favour the instrument is executed, or persons claiming under him.

Effect of admission to register of such an act.

An act of this kind, protecting the rights under an executory contract from being defeated by a disposition *inter vivos*, would not, of course, otherwise give to such a contract, whether as against the person by whom the act was executed, or persons acquiring his interest otherwise than by act *inter vivos*, as assignees in bankruptcy or the like, any increased efficacy. The disability occasioned by such an act must be removable by a Court of Equity, as well as by the act of the person for whose benefit it may be subsisting.

This species of act would be available for a limited period only, but might be from time to time renewed. It would, as observed by the Registration Commissioners, be a prompt and convenient security for a temporary loan, and would have all the advantages without the risks of the present security by deposit of title deeds.

The name of caveat would be inapplicable to such a restraint on alienation, as acts of this kind must occasion under a registration of titles. They might, perhaps, be called Disabling Acts, and for the purpose of distinguishing them from another description of disabling act hereafter to be referred to, I shall term them Disabling Acts in favour of persons.

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III.

System of notation and indexes.

I now come to the system of notation and indexes to be employed by the registrars for recording and rendering ascertainable the existing state of ownership of each parcel of land. The importance of this part of the machinery of a register will not be overlooked.

Land index.

A Land Index would be framed with reference to the numbers on the public map. Each parcel of land having a separate number on the map would thus be capable of being separately referred to. Provisions for the subdivision on the general map, or by means of a supplemental map, of any parcel of land denoted by a single number undergoing a physical subdivision, and for attaching a separate number or symbol on the map and in the index to each portion of land becoming separate on such a subdivision, and for bringing into one parcel on the map, and under one number on the map and in the index any separate parcels of land united by the removal of fences, would be necessary.

Division or union of parcels of land on map.

Consequent changes in index.

Separate series of references in land index as to undivided shares.

With reference to any parcel of land of which the fee-simple was held in common, or of which an undivided share of the fee-simple was subject to a derivative interest not affecting the entirety, a similar course could be taken. The undivided shares of such land would constitute a sub-class, distinguished from each other by numbers or symbols, and each share would have a separate place in the index, with a separate series of references leading to the ownership of the fee-simple and to the derivative interests affecting it. On this principle, in the forms of instruments used for the purpose of illustration, the moiety of land dealt with has been entered as moiety No. 1. Upon the termination with reference to any undivided shares of a state of ownership which had caused them to be distinguished by separate numbers or symbols, such shares would be brought under a single number or symbol.

Modes of effecting alterations in map and index.

Alterations in the map and index, consequent on alterations in the physical division of land, must be made on the application of parties interested in the land. The subnumeration in the index, required in cases of tenancy in common, or of derivative interests affecting an undivided share only of the fee-simple of land, would be performed by the officers of the register as part of the machinery for giving effect to instruments by which any such state of ownership was occasioned, and it would in like manner be the duty of the officers to put an end to every such subnumeration on the termination of such a state of ownership.

Numbering and classing of instruments admitted to register.

Every instrument admissible to the register would be so headed as to show the class to which it belonged. The instruments received in the registry office on each successive day would have a separate series of numbers without distinction of class, and the date of such receipt and the number would be inserted by the registrar at the head of each instrument. All these particulars have been inserted at the heads of the forms used for the purpose of illustration. Thus the absolute transfer of the fee-simple of land appearing at page 215 is intended to represent the 219th instrument admitted to the register on the 6th of April, 1860. The order in which instruments would take effect on the registered ownership would be wholly dependent on these dates and numbers. It would be convenient that the forms of instruments should be of uniform size, so as to admit of their being bound together or preserved bookwise in the register office in such order as might be found convenient. The only parts of instruments which would be of uncertain length, would be the schedules and the special provisions, and it might be provided that for these purposes paper or parchment of a uniform size with the earlier portion of the instrument should be used.

Every ownership of the fee-simple of land to constitute an account.

I propose that every ownership of the fee-simple of land, either of an individual or of joint tenants, shall constitute in the books of the registry office what, by analogy with the usage as to Government Stock, I will call an Account. When the fee of any parcel of land was held in common, the ownership of each undivided share would, of course, appear in a separate account. The land comprised in any account might be added to, and diminished from time to time on the owner's acquisition or alienation of the fee-simple of land, so that all the fee-simple land of any owner would be comprised in a single account. Upon the absolute transfer of the fee of all the land comprised in any account, the account itself would close. Upon the absolute transfer of the fee-simple of land to any person or persons not being an owner or owners having a subsisting account, a fresh account would be opened.

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Accounts to be numbered.

For the purpose of reference, these accounts would be numbered. In order to avoid the inconvenience of very high numbers, a new series of numbers might be commenced with each year, the year in which the account was opened forming part of the reference. Thus the accounts to which references are inserted by the registrar in the absolute transfer of the fee-simple of land at page 215 are referred to as the accounts of 1858, No. 29, and of 1860, No. 764.

Form of accounts.

An account of the ownership of the fee-simple of land would contain a tabular form for the entry of the land becoming comprised in it, similar to that which forms the schedule to absolute transfers of the fee-simple of land. A large estate might be entered in an account thus framed within a moderate compass. Additional columns in the table would be requisite for referring for the information of the registry officers to the instrument of absolute transfer by which the land included in each entry became comprised in the account, for denoting the transfer out of the account of any land, whether wholly, or as to such an undivided share only as to leave any undivided share still comprised in the account, and for referring to the instrument of absolute transfer by which this has been effected. The table must also afford the means of entering the death of any joint tenant, and for entries of any *lis pendens*, injunction, disability arising from infancy, coverture, or lunacy, and any disabling act affecting the ownership or power of disposition of all or any of the land comprised in it.

Alterations of numbers or symbols referring to any land in such accounts.

The numbers and symbols applicable to any parcel of land in the accounts of the fee-simple ownership must, of course, conform to any alterations which may take place in the numbers or symbols of the Land Index having reference to the same land. When the alteration was consequent on changes in the physical division of land, the entries in the owner's account of the old numbers could be closed by entries in a column provided for that purpose in the table referring to fresh entries under the new numbers to which the land would be carried down. Upon a disposition by an owner of the fee-simple of land occasioning a subnumeration of any undivided shares of such land, the undivided shares, if any, remaining comprised in the account of the owner, would be in like manner carried down to fresh entries in such account under the distinctive symbols thus acquired. Undivided shares which, on such a disposition, became comprised in any new account, or subject to any derivative interest thereby created, would appear in such new account, or as comprised in such newly created interest under such distinctive symbols as the disposition might cause to be attached to them. When, upon any change of ownership, a subnumeration was wholly or partially put an end to, any undivided shares thus brought under a single number or symbol, would be carried to a single entry in the account of their owner under such number or symbol.

Entries for giving effect to absolute transfers of fee-simple of land.

Upon the receipt in the register office of an absolute transfer of the fee-simple of land, it would be the duty of the registry officers to enter the land transferred in the account of the person to whom the transfer was made, and at the same time to denote by entries, in manner already referred to, in the account of the person making the transfer, that the land transferred has ceased to be comprised in it.

Particulars to which the land index must lead, and entries requisite to be made therein with reference to such particulars.

It would be the province of the Land Index to lead directly to the ownership of the fee-simple, and to every subsisting derivative interest arising immediately out of the fee-simple of each parcel of land, or when any undivided shares of land had separate places in the index, then of each such undivided share. Where miscellaneous rights affecting other lands were annexed by the instrument creating them to the fee-simple of land, the existence of such rights would also require to be connected by entries in the Land Index with the land to which they were annexed. Upon every absolute transfer of the fee-simple of any land the registrar would by an entry in a column provided for the purpose cancel the reference in the Land Index in connexion with such land to the account of the transferror, and would insert a fresh reference to the account of the transferree. Upon the receipt in the office of any instrument creating a derivative interest affecting the fee-simple of land, a reference to such instrument would be entered in the Land Index in connexion with the land affected. These references would specify the nature of the instrument, and its date and number on the register. Further particulars concerning a derivative interest, including the existence of any modifications of it, would be ascertain-

able as hereafter explained. A column in the Land Index would remain for the entry by the registrar, at the proper time, of the extinguishment of the derivative interest, and upon such an entry the interest extinguished would cease to have any connexion with the subsisting registered ownership of the land to which the entry referred. The references to instruments creating miscellaneous rights annexed to the fee-simple of land, and to the subsequent extinguishment of such rights, would be made in a similar manner.

Record of dealings with derivative interests, and creation and dealings with sub-derivative interests.

The restriction of the Land Index within these limits will leave dealings with derivative interests, and the creation and dealings with sub-derivative interests, to be otherwise recorded. An attempt to combine the history of derivative interests with the particulars immediately relating to the ownership of the fee could lead to nothing but confusion.

Requisites of notation with reference to dealings with derivative interests.

The system of notation adopted with reference to dealings with derivative interests must be capable of embracing those exceptional cases in which a derivative interest constitutes the main beneficial ownership of land. When a large estate is held for a long term of years, the dealings with such a derivative interest may be many and complicated, especially where the land is built on. But the provision of machinery applicable to these cases will not lead it to be forgotten that their occurrence is exceptional, or that only a small part of such machinery would be brought into play in recording the dealings which usually take place with reference to such derivative interests as ordinary leases and mortgages.

History of each such interest to be separately recorded in forms constituting a register annexed to instrument creating it.

Index to this register.

I propose that the history of each separate derivative interest shall be separately recorded. Tabular forms constituting a register for that purpose, might be conveniently annexed to or bound up with the instrument by which the derivative interest was created. An index of the land affected by the derivative interest could be made to form part of such a register by the annexation to the schedule of the instrument creating the interest, of a tabular form adapted to the entry of references applicable to each separate parcel of land appearing in such schedule.

Frame of the register.

It would be convenient that this register should be so framed as to establish a distinction between acts affecting all, and acts affecting part only of the land affected by the derivative interest. The majority of acts affecting derivative interests are of the former class, and I think the register should admit of the entry of a reference to such an act once for all without any resort to the index. The employment of the index would be confined to cases involving a distinction between different parcels of land affected by the derivative interest. The transactions affecting a derivative interest of which the ownership was not subdivided would thus be brought under a few simple entries, while the numerous dealings with a large estate sub-let for building, would be distributed in connexion with the land to which they respectively related, over an index varying in length with the quantity of land comprised in the derivative interest.

Cases in which index would be resorted to.

Ownership of derivative interest to be manifested by its register.

Subdivisions of such ownership.

The existing ownership of the derivative interest would be the first object of manifestation by means of this register. So long as changes in the ownership were effected by absolute transfers of the derivative interest as to all the subject-matter comprised in it, this object could be effected by entries in an appropriate table of the substitution of one owner for another, with references to the instruments causing the substitution. But upon the occurrence of an absolute transfer as to part only of the subject-matter of the derivative interest, it would become necessary to record not only the names of the several owners, but the subject-matter comprised in each separate ownership. For this purpose, accounts would be requisite varying in form as the separation of ownership directly affected the land, or was confined to the subject-matter of an interest derivative in respect of the subject-matter, but in all cases analogous in principle to the proposed accounts of the ownership of the fee-simple of land. When the separation of ownership led to any distinction in the ownership affecting different parcels of land, entries in the index leading to the state of ownership affecting each separate parcel of land would of course be requisite. When a separation of ownership was occasioned by an absolute transfer of part only of the miscellaneous rights constituting a derivative interest, each separate ownership would, as observed in a former page, possess a separate character depending on the special provisions of that instrument, to which appropriate references must consequently be made in the accounts of each such ownership.

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Register as to mortgages.

The register of the dealings affecting a mortgage must afford the means of referring to any acknowledgment by the mortgagor incorporated in an instrument of absolute transfer of the amount due on the mortgage. The circumstance, that the ownership of a mortgage would be incapable of subdivision, and that sub-derivative interests could not be carved out of it, would render the registers relating to mortgages peculiarly simple.

Particulars in addition to changes of ownership by absolute transfer to be referred to by registers relating to derivative interests.

The register relating to a derivative interest must afford the means of referring to acts of modification of the derivative interest, to acts creating sub-derivative interests, to acts by which miscellaneous rights affecting other lands are annexed to the derivative interest, to the extinguishment of sub-derivative interests thus created, or miscellaneous rights thus annexed, and to acts by which the derivative interest is itself extinguished. When any of these acts affected all the land comprised in the derivative interest, the entry would, as already explained, be made once for all in the register, but when it affected part only of such land the entry would be made in the index in connexion with each parcel of land affected. Means of entering the death of any joint-tenant or joint-executor, and any *lis pendens*, injunction, disability arising from infancy, coverture, or lunacy, and any disabling act affecting the ownership or power of disposition of all or any of the subject-matter of the derivative interest, must be similarly provided by the register.

Entries as to prior derivative interests.

Derivative interests having priority over the interest to which the register relates at the time of its creation, or intervening between such creation and any subsequent instrument of modification, would, as already stated, be specified in the schedule to the instruments of creation or modification, as the case might be. Derivative interests, acquiring priority by the concurrence in their creation of the owner of the interest to which the register relates, must be entered in the register either once for all as affecting all the land affected by the derivative interest to which the register relates, or in the index in connexion with the land affected by it. Upon the extinguishment of any derivative interest thus specified, whether in the schedule to the instrument of creation or modification, or in the register or index, an entry to that effect must be made by the registrar in a column left for the purpose.

Entries in registers on alterations of numbers of land.

Alterations in the map and Land Index consequent on alterations in the physical division of land, must occasion corresponding alterations in every reference to such land throughout the register office. The tables annexed to the instrument creating a derivative interest, must afford the means of effecting such alterations. The classification consequent on the creation of a tenancy in common need extend no further than the interest held in common. The existence of a tenancy in common affecting the lessor's estate would not make it necessary to introduce the sub-classification into a lease of the entirety or interests subsisting under it. On the other hand, the creation of a tenancy in common affecting a derivative interest would occasion a sub-classification by the registrar, which need not be carried back to the estate from which it was derived. The tables annexed to the instrument by which the derivative interest was created, must afford the means of effecting sub-classifications of this kind.

It might be convenient that instruments of absolute transfer and modification affecting derivative interests, should, on their receipt in the office, be annexed to the instruments creating the derivative interests to which they relate.

The register of dealings affecting a derivative interest, consisting of miscellaneous rights annexed to the ownership of another interest in land, would, of course, be in some particulars different in form from other such registers.

Registers with reference to sub-derivative interests.

Instruments creating sub-derivative interests would have separate registers for recording the dealings affecting them, similar in all respects to the registers to be kept relating to derivative interests. The system would be carried on through any number of successive sub-derivative interests that might be created, each interest being connected by the entries already referred to, with the interest from which it was derived, and with interests derived immediately out of it.

Effect of successive sub-derivative interests.

Land index would afford means of tracing the state of ownership.

Index of Owners.

The original Land Index would thus afford the means of tracing all the successive interests subsisting in land, like the successive generations in a genealogical table. An Index of Owners leading from the owners to their interests in the land would be the necessary complement of the system. A considerable saving of time and labour would result from the facility of referring

directly to the interest of any owner, instead of arriving at it by tracing the general state of the ownership of the land. Means of ascertaining with ease and certainty whether a deceased person, a bankrupt, or a lunatic, had interests in land, and the nature of such interests, would often be useful, especially as regards interests, such as mortgages, involving no notoriety. *Mr. Mac Donnell.*

Entries in index of owners.

Entries in the index of owners would be necessary upon every act done by means of the register, whereby any person either acquired any registered interest in land or ceased to be entitled to such an interest. The name of every individual joint tenant should appear in its proper place in the index, with a reference, when necessary, to an enumeration elsewhere in the index of all the joint tenants. When an owner has more than one subsisting interest in land, each ought to be separately referred to by the index.

The means of maintaining an alphabetical index of persons undergoing a constant addition of names are well understood. An index of owners must also undergo a constant cancellation of names; but this cancellation could be effected in such a manner as not greatly to impede the search for names continuing uncancelled. Periodical reconstructions of the index, omitting cancelled names, would be requisite.

Record of judicial proceedings and evidence of events, occasioning changes of ownership.

Books for recording the various judicial and quasi-judicial proceedings, and the evidence of the various events occasioning changes of ownership, by operation of law within the scope of the register, would, of course, be requisite. These books would be kept by the officer charged with the examination of the evidence required by the rules of the office in such respective cases. Upon the evidence in any case being found satisfactory, it would be entered in the proper book by this officer, and the person claiming the estate by operation of law would thereupon be entitled to perfect his interest by the execution of the necessary instrument, referring, as has been exemplified in some of the forms of instruments in former pages, to this record in the books of the office, of the proceedings or evidence on which the change of ownership is founded.

Certificates of ownership.

It would be part of the duty of the registrar to issue Certificates affording information as to the ownership of land. Such certificates might, at the option of the persons applying for them, either embrace the whole ownership of any portion of land, or be confined to the ownership of any one or more subsisting interests therein. They must specify the dates and numbers necessary for referring in the books of the office to all the particulars concerning the interests they relate to, and for enabling the preparation of any instruments affecting the ownership of such interests. Office copies of instruments creating subsisting derivative interests, and of other instruments material to the actual state of ownership of land, would be issued by the office.

Functions of such certificates. Restrictions on their issue.

I do not propose to attach to these certificates any other function than that of affording information as to the state of the registered ownership. If it were found necessary that the registered ownership should be secret, it would be requisite that the issue of certificates and the access to instruments on the register should be placed under some restrictions, removable by the assent of the persons having the necessary interests in the land.

IV.

Provisions for the creation and security of interests not admitted to register.

I proceed to explain the expedients by which I propose to provide for the creation and enjoyment, with undiminished facility and security, of interests in land not directly admissible to the register.

Some of such interests may at present constitute legal interests; others can only take effect by way of trust.

Of the various interests excluded from the register, there are several which may at present be so created as to constitute legal interests in land. Estates tail, remainders of all kinds, terms of years to take effect *in futuro*, springing and shifting uses, and executory devises, fall within this class. There are many other common interests in land which, even under the present law, can only take effect by way of trust. It is by this means that settlements of leaseholds, corresponding in effect with ordinary settlements of freeholds, must be made, and that it is usual to provide for the raising of portions, for indemnities, and many other future or contingent purposes.

All such interests must, under proposed system, be created by way of trust. Necessity

The restriction of registered interests in land within the limits I have proposed, would necessarily leave all these excluded interests, whether at present capable of constituting legal interests or not, to be created by way of trust. But such a change must be accompanied by some machinery for enabling the

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of providing for the imposition of checks on registered ownership of trustees.

imposition of an effectual system of checks upon the registered ownerships of trustees. It could not be proposed that those classes of future interests in land which are the foundation of settlements should be practically deprived of the indefeasible character which may be at present attached to them by means of a legal limitation. And it may be observed that not only must the number and importance of interests in land, capable of being created only by way of trust, be increased under a registration of titles, but the facility of transferring land, which would result from such a system, would render interests subsisting by way of trust in some respects more capable of being prejudiced by the fraud or misconduct of trustees than at present. The present doctrine of notice to a great extent supersedes the distinction between fiduciary rights, affecting the person of the legal owner, and legal interests in the land itself.

Proposed entry in the nature of a distringas.

It has been proposed to provide for the security of rights and interests of a fiduciary character, by giving to the *cestuis que trustent*, or to persons acting on their behalf, power to introduce upon the register entries which, whether under the designation of claim, inhibition, or distringas, will constitute a register of claimants of equitable rights affecting registered interests in land. The owner of a registered interest affected by such an entry, would be entitled to require the right or interest thereby protected, to be asserted within a given period in a court of justice, under pain of the removal of the entry.

Utility of this expedient.

I think a system of this kind might be of great advantage to *cestuis que trustent*, and ought to form part of a registration of titles. It would enable such persons to procure, in the majority of cases, notice of any intended disposition of a legal or registered interest affected by trusts. But the security of settlements is at present capable of being provided for by settlors, irrespectively of the subsequent conduct of any *cestui que trust.* If the power of creating legal limitations, and the security to equitable interests arising from the doctrine of notice, by which this object may at present be effected, are to be taken away, some other means of attaining the same result must be placed in the hands of settlors themselves by way of equivalent. No such expedient as above referred to could constitute such an equivalent. A settlor might indeed be empowered to make on the execution of a settlement an entry in the nature of a distringas on behalf of every person unborn or under disability, taking an interest under the settlement. But he could have no security that such entries might not be subsequently got rid of, to the prejudice of persons for whom it was his object to provide. Such persons, or those who had undertaken the duty of protecting their interests, might, if their rights depended on such an entry, be called upon under pain of forfeiture to take the initiative in a litigation involving perhaps the construction of a difficult will, while their chance of benefiting might on the most favourable construction be destructible by the birth of a child or other probable event. Many claimants would be unwilling or unable to take this course, and the difficulty of finding persons to commence such a litigation on behalf of persons under disability and of unborn persons would be greater still.

But it could not be an equivalent to settlors for present modes of providing for security of settlements.

Moreover, even as regards *cestuis qui trustent* in a position to attend to their own interests, the protection afforded by these entries, though considerable, would be far from perfect.

An entry in the nature of a distringas, must be summarily removable.

It is essential that the proceedings for getting rid of such entries should be of a summary character. If personal service on the claimant were made requisite, and ample time were given for the assertion of the right, the abuse of the power of making entries by unscrupulous or irresponsible persons might occasion the most serious inconvenience to landowners. Entries by the owners of *bonâ fide* equitable interests might interfere with a settlor's intentions. Nearly every settlement gives to the trustees a power of sale, with the consent of the tenant for life during his life, and after his death at their discretion, and in such cases entries by remaindermen, if not summarily removable, might defeat or prejudice the powers of disposition thus advisedly created. There are also commonly found in settlements powers of effecting partial dispositions which might be similarly impeded, and it might be difficult to devise a machinery for superseding these entries, so far as might be necessary for the purpose of a partial disposition, without prejudice to their efficacy as regards the interest remaining undisposed of.

Liability to summary removal would render such entries, in many cases, of little avail.

But there are many cases in which the liability of these entries to be summarily got rid of would render them of little avail. If personal service on the claimant were not a necessary preliminary to the removal of such an entry, a

change of address left unnotified, a temporary absence, the want of a personal representative of a deceased person, the vacancy of a trusteeship, of the committeeship of a lunatic, or of the assigneeship of a bankrupt or insolvent, might be fatal to an equitable interest in land. At the same time, personal service would, in many of these cases, be impossible or difficult. If the time for the assertion of the right claimed were short, poverty, ignorance, sickness, or absence abroad, often compulsory, as with persons serving in the army or navy, might render an entry of this description unavailing. The occurrence of death, lunacy, or bankruptcy on the eve of the expiration of the period limited, might occasionally prevent the assertion of the right, however long the period itself might be. Any peculiar circumstances rendering the assertion of the right within a given period improbable or highly inconvenient, might be taken advantage of in particular cases as a means of fraudulently getting rid of an equitable interest, or exercising a pressure upon its owner.

Necessity of enabling imposition of checks on the registered ownership by settlors.

It appears to me to be requisite, for the effectual protection of trusts under a registration of titles, not only to enable *cestuis que trustent* to make entries on the register in the nature of a distringas with reference to the registered interests of trustees, but to enable the imposition by settlors themselves, as part of the machinery for effecting settlements, of checks upon registered ownerships affected by trusts.

Proposed disabling acts for the protection of trusts.

I propose that it shall be competent to the owners of a registered interest in land affected by the trusts of any assurance, to execute a form of instrument, admissible to the register, restrictive of their own power of disposition over the registered interest. These instruments would refer, by dates or other particulars sufficient for the purpose of identification, to the instrument *in pais* creating the trusts. They would constitute a species of disabling act, similar in principle to the disabling acts in favour of persons already referred to; and, for the purpose of distinction, I shall call them Disabling Acts for the protection of trusts. The instruments creating trusts, and referred to by such disabling acts, would form no part of the register, but would remain in the custody of the parties concerned.

Effect of such a disabling act.

A disabling act for the protection of trusts, would, within the limits with reference to duration and other particulars hereafter to be explained, disable the persons executing it and persons claiming under them, from disposing of the registered interest to which it referred, by act *inter vivos*. It would not prevent a testamentary disposition, by an appointment of real representatives, or by direct devise, as the case might be, because the balance of convenience is in favour of the devise of trust estates; but the persons taking under such a disposition, as well as persons acquiring the interest by operation of law, would take subject to the operation of the disabling act. It might be provided that the existence of such an act, being evidence of the existence of trusts affecting a registered interest, should prevent such interest from passing to assignees in bankruptcy or insolvency of the registered owner.

Purposes of such an act. It would be removable by the Court of Chancery.

The only legitimate purpose of acts of this kind would be the protection of equitable interests in land. The Court of Chancery would have a general jurisdiction to order their removal from the register, or to direct that any disposition should take effect notwithstanding such an act. The absence of any equitable interest to be protected would form a conclusive ground for the removal by the Court of the disabling act. The employment of these acts for any purpose except the protection of trusts would thus be rendered unavailing, and a means would exist in all cases for preventing the operation of such an act from extending beyond the purposes of the settlement with which it was connected.

But an application to the Court is not to be the ordinary means of removing such an act. Operation of such an act may be limited.

But I do not propose that the employment of a disabling act for the protection of trusts should involve, under ordinary circumstances, the necessity of any application to the Court of Chancery. I think that facilities may be given for assigning limits with reference to duration and other particulars to acts of this kind which, without involving any complexity calculated to embarrass the officers of the register, would render their operation commensurate with the amount of restraint necessary for the purposes of settlements, and would cause such acts to expire of themselves when their objects had been accomplished.

Proposed limits as to duration.

I think the duration of disabling acts for the protection of trusts might be permitted to be limited to lives in being simply, or to lives in being coupled

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conjunctively or disjunctively with the coming of age, or marriage, or failure, within periods having relation to the rules against perpetuities, of any issue of persons in being. Other periods which would be convenient with reference to particular modes of settlement might probably be suggested.

Removal of the Act on its determination.

The removal from the register on its determination of a disabling act, thus limited in duration, would involve no judicial proceeding, and would be the duty of the registrar. It would not be necessary to put a construction on the settlement with which the act was connected, or to ascertain with reference to the true construction that there were no trusts remaining unsatisfied. The determination of the act would depend on the happening of certain definite events of which proof could be received in the register office on the same footing and with the same provision as to disputed questions, as in the case of events occasioning changes of ownership by operation of law. It would be for the settlor to take care that the disabling act corresponded in duration with the purposes of the settlement. If by his negligence the duration of the act were too confined, a portion of his limitations would be deprived of its protection. If it were too extensive, an application to the Court of Chancery might be rendered necessary for the purpose of getting rid of it after its legitimate object was fulfilled. The registrar could deal with the duration of the act only by reference to its terms, and could pay no regard to the contents of the settlement with which it was connected.

Limitation of disabling acts during life of tenant for life.

There are also several particulars in which it would be requisite or convenient that limits might be capable of being imposed on these disabling acts within the duration to which they might be confined. Thus it would be useful to permit disabling acts having reference as regards duration to the lives of any persons, to be limited during the lives of such persons to acts done without their concurrence. These persons would of course in ordinary cases be the tenants for life under settlements, and by this means provision could be made for the exercise, during the life of the tenants for life, of powers of disposition by the trustees with their concurrence.

Limitation to particular classes of dispositions.

So also it would be useful that disabling acts for the protection of trusts should be capable of being limited during their continuance to particular classes of dispositions, under the classification of dispositions adopted by the register office. There are many cases in which, with a view to the general purposes of the settlement, it would be desirable that the operation of the disabling act should not be more extensive than the danger against which it is intended to guard. But the danger of fraudulent dispositions by trustees would be almost entirely confined to dispositions not involving any change in the possession. Notice to purchasers of the existence of equitable interests in land may arise from the state of the possession as well as from the state of the documentary title; and under no system of transferring land could purchasers be exonerated from regarding the state of the possession.

With a view to provisions for raising portions and other gross sums of money, it might be convenient that the operation with reference to mortgages, of disabling acts, should be capable of being so limited, either generally or during periods having reference to the birth, marriage, or failure of issue, as to leave the power of mortgaging, up to any specified amount of money, unaffected.

Adaptation of such acts to several modes of settlement.

The preparation, for the purposes of the register, of a series of forms of limited disabling acts, for the protection of trusts adapted in duration and other particulars to the several modes of settlement in present use, would involve a careful examination of many details into which I will not enter; but I can see no reason to apprehend any insuperable difficulty in effecting this object.

Distinction between operation of these acts on dominion of trustees, and present powers of settlement.

Limited disabling acts for the protection of trusts would not afford the means, in cases where some powers of disposition were desired to be given to the trustees, of rendering their dominion over the legal ownership precisely identical with that which may be given to them by a settlement operating by means of the statute of uses and the doctrine of powers. The powers of disposition of trustees might be confined by such acts during particular periods, to particular species of disposition, to be made when desired with the concurrence of particular persons, but the operation of dispositions within these limits could not be rendered dependent, as they may be at present, on the purposes for which such dispositions are made. Thus, a disabling act for the protection of trusts might be limited, as regards absolute transfers during the life of the

tenant for life, to acts done without his concurrence, for the purpose of enabling sales or exchanges by the trustees, with his concurrence; but such purpose could not be manifested by the disabling act, or noticed by the registrar, and effect would be given by the registrar to absolute transfers by the trustees, with the concurrence of the tenant for life, without reference to the purpose for which such transfers were made. But a power to trustees of a settlement under the existing system, with the consent of the tenant for life, to revoke the uses of the settlement for the purpose of a sale or an exchange, does not enable the legal estate to be passed except upon an actual sale or exchange in exercise of the power.

It would be obviously inconsistent with the principle of a registration of titles, that such powers of disposition over the registered ownership as the settlor thought fit to leave unaffected by the disabling act, should be dependent on the provisions of the settlement. Such a rule would involve the necessity of an examination of the settlement by purchasers, and consequently of retrospective deductions of title. But the cases in which any addition to the practical risk of fraud by trustees would arise from this circumstance would be exceptional. Nearly all the purposes for which a dominion over the registered ownership would be left in the trustees, are such as would require to be effected by means of a substantial alienation, either by way of sale or mortgage; and it is obvious that the power of committing a fraud of persons necessarily holding in their own hands, both under the present law and the proposed system, the power of selling or mortgaging the trust estate, and of giving receipts for the money thus arising, cannot be greatly increased.

Disabling acts ma be unlimited. Effect of unlimited disabling act.

It would, of course, be open to settlors wishing their settlements to be altogether independent of the conduct of trustees, to employ disabling acts for the protection of trusts unlimited in duration or any other particular. The effect of such an act would be, that applications to the Court of Chancery would be necessary, as well for the purpose of every disposition by the trustees under the powers of the settlement during the subsistence of the trusts, as of getting rid of the disabling act altogether, when the trusts were fully satisfied. If the settlement was testamentary, the intervention of the Court would also be necessary, in case it became requisite to raise money out of the settled estate for payment of the settlor's debts. The expense of applications to the Court arising from the subsistence of unlimited restraining acts for the protection of trusts, might, I presume, be rendered considerably less than is commonly incurred under the present system in deducing the title to a settled estate on the exercise by trustees of their powers of sale or exchange, or of mortgaging, for raising portions or other similar objects.

Satisfaction of trusts of settle ment, for the purpose of removal of disabling act.

For the purpose of the removal of a disabling act for the protection of trusts by the Court of Chancery, the trusts of a settlement would be deemed to be satisfied, when they had resolved themselves into interests vested in persons free from disabilities and concurring in the removal of the disabling act. If the first subsisting estate of inheritance were an estate tail, the equitable estate tail would entitle its owner to represent the inheritance on an application for the removal of a disabling act, and to require upon such removal a transfer of the registered ownership of the fee.

Imposition of disabling act would be the province of the settlor.

It would be for the settlor to determine whether a disabling act for the protection of trusts should accompany a settlement. The power of resorting to such an act would be the substitute for the power of creating legal limitations, and the security to fiduciary interests arising from the doctrine of notice, which he possesses under the present system. With reference to trusts declared by will, it would be requisite to enable testators to direct that the registered interests of persons appointed real representatives or of devisees, by means of the forms of the register office, as the case might be, should be subject to acts of this kind; and such directions should be enforceable by the officers of the register. If a settlor thought fit to give the legal estate to trustees unfettered by any disabling act, the *cestuis que trustent* must abide by such an arrangement, though they would, of course, possess the same right to the assistance of a Court of Equity, upon the occurrence or reasonable apprehension of misconduct on the part of trustees, as exists under the present law in cases where the legal dominion over any real or personal property is vested in trustees. They would also be entitled to avail themselves of the protection of an entry in the nature of a distringas.

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Suggestion for execution of trusts by public officer.

There can be no doubt that the difficulty experienced by many settlors in finding suitable persons to act as trustees constitutes a considerable objection to any system by which settlements can be effected only by way of trust. The judicial execution of trusts by the Court of Chancery is at present too formal and expensive to mitigate this evil. If provision could be made on the establishment of a registration of titles, for the execution of trusts at a moderate expense by a responsible public officer, either solely, or in association with other trustees, much as an official assignee is associated with creditors' assignees in bankruptcy, the force of this objection and the apprehension of risk to settlements of land from the misconduct of ordinary trustees would be greatly diminished. A similar result would probably follow from the establishment of wealthy public companies for the execution of trusts.

Disabling acts affecting part only of settled estates.

A disabling act for the protection of trusts might, of course, have reference to part only of the land comprised in a settlement; and separate disabling acts of different characters as regards duration or otherwise might be executed with reference to different portions of such land. The acquisition by trustees of fresh land on the trusts of an existing settlement would necessitate the execution of a fresh disabling act. It would not be proper that disabling acts should be permitted to be executed by registered mortgagees, because the right of the mortgagor to pay off the debt either by himself, or by a third party on a transfer of the mortgage, might be thereby prejudiced. Trustees of a mortgage debt are always authorized to receive such debt, according to the present practice of conveyancers.

Mortgages not to be the subject of such an act.

Limited disabling acts would afford the means of providing for dispositions by trustees.

The limitation of disabling acts for the protection of trusts would afford the means of providing for dispositions by trustees, to take effect out of their registered ownership, in execution of the trusts and powers of settlements. It is by the trustees that absolute transfers, for the purpose of sales, exchanges, and partitions and mortgages for raising portions, or other purposes, are accomplished under the present system of settlements. Powers operating under the Statute of Uses for creating legal jointure rentcharges, and other legal interests, for the benefit of objects of the settlement, are now sometimes given to the tenant for life; but no inconvenience could arise from the restriction of these powers, as would be necessary under the proposed system, to the creation by the tenant for life of equitable interests in favour of objects of the settlement, which would attach to the registered ownership of the trustees in the same manner, and with the same protection of disabling acts, as if such interests had been created by the settlement itself.

Powers of leasing must enable dispositions of registered ownership.

The only exception to this observation is to be found in the powers of leasing usually conferred by settlements on tenants for life. These powers could not, for obvious reasons, be restricted to the creation of equitable interests. It would of course be possible, and with reference to the minorities of objects of the settlement, might be useful to provide for the making of leases by the trustees, by means of a suitable limitation of the disabling act; but there are many cases, especially where the leases to be made are numerous, in which it would be highly inconvenient that the execution of leases during the life of the tenant for life, and while the possession and management of the settled estate was in his hands, should be the duty of the trustees.

Necessity of enabling leases by tenants for life under settlements.

I think it is essential for the purposes of settlements that some machinery should be provided for conferring on tenants for life the means of making leases to take effect on the registered ownership. This object must be accomplished by the creation of powers in the strict sense of the word; for the tenant for life under a settlement would, under the proposed system, generally have no registered interest in the land, or an interest of a joint or limited character only.

Creation of powers of leasing on mortgages.

It has been stated in a former page, that the machinery for enabling powers of leasing to be given on a mortgage would be explained in connexion with the subject of powers of leasing for the purposes of settlements. The creation of such powers by mortgages is frequent, and their utility is in many cases very considerable. When the security is ample, and the nature of the property necessitates many leases, the power of leasing is sometimes given to the mortgagor, and, in other cases, the power is given to the mortgagee.

Powers of leasing are accompanied by restrictions which could not be dealt with by registrar.

Powers of leasing, whether created in connexion with settlements or mortgages, are generally accompanied by restrictions on their exercise with reference to the acceptance of fines, the duration of the terms to be granted, the covenants to be entered into by the lessees, and various other points. When

building and mining leases are contemplated, the restrictions increase in number and complexity. Many of the restrictions which accompany powers of leasing are of such a nature that it would be impossible to impose on the registrar the duty of seeing that they are attended to.

Proposed power of leasing; its principle and operation.

I think the creation of powers of leasing for the purposes of settlements and mortgages may be provided for by means of the same principle which I have applied to the creation of derivative interests. I propose to permit the owners of a registered interest in land to execute an instrument admissible to the register, conferring powers of leasing on any person or persons, whether having any registered interest in the land affected or otherwise. Such an instrument, which may be called a Power of Leasing, would specify, by means of a prescribed form, the subject-matter to be leased, whether land or any derivative subject-matter, the duration of the leases to be granted, and the person or persons on whom the power was conferred.

Restrictions on the exercise of the power might be imposed by special provisions, which would not be noticed by the registrar, but would have the same effect on the sufficiency of leases granted in exercise of the power, as, on the principles already explained, the special provisions of a derivative interest would have on the sufficiency of subderivative interests carved out of it. The registrar would give effect to every lease by the donee of the power, found regular in respect of subject-matter and duration. But if the special provisions made it essential that leases in exercise of the power should be made without fine or premium, or should contain covenants by the lessees to pay the rent, or to insure, a lease made without regard to these conditions might be voidable in a court of justice.

Would bring restrictions on powers to the knowledge of lessees.

This mode of creating powers of leasing would have the advantage of bringing the conditions under which such a power was created, to the knowledge of an intended lessee, disconnected from the other details of the settlement or mortgage which had given occasion to the creation of the power.

Operation of leases under such powers.

Leases made in exercise of these powers would of course take effect out of the registered interest of the persons by whom the power was created. For the purpose of a mortgage such a power would be created by the concurrence of the owner of the interest mortgaged and the mortgagee, and the leases would take effect out of the mortgaged estate in priority to the mortgage.

Extinguishment of such powers.

Powers of leasing would probably be granted for the purposes of settlements to the donee of the power for his life, and of mortgages to the donee and persons claiming under him. The determination or surrender of such powers would be dealt with as the determination or surrender of a derivative interest, except that during the continuance of any lease granted in pursuance of such a power, the instrument creating the power must continue to be material with reference to such lease, although the power of granting further leases might have determined or been surrendered.

Equitable extinguishment and suspension of powers of tenant for life.

The powers of tenants for life to concur in dispositions by trustees under disabling acts for the protection of trusts, and to make leases, would be capable of being equitably suspended or extinguished by the same means by which analogous powers of tenants for life may be at present thus affected. I think it would be useful, with a view to the prevention of any disposition on the register by the exercise of a power thus equitably suspended or extinguished, to allow such powers to be the subject of any such entry in the nature of a distringas, as might be admissible to the register with reference to actual estates in land. A power to lease would also be actually extinguishable on the register, as already pointed out, by an instrument of surrrender; but the power of concurring in dispositions by trustees might in some cases be given for purposes which would render its surrender a breach of duty, and I should not, therefore, propose that it should be capable of being thus extinguished.

Mode of giving effect thereto.

Effect of disabling acts on right to create powers of leasing.

Disabling acts for the protection of trusts might prevent the creation by the trustees of powers of leasing as well as direct dispositions of land, and where land was settled on successive tenants for life, the disabling act would require to be so limited as to admit of the creation, from time to time, by the trustees, of powers of leasing in favour of the tenants for life in remainder as they became entitled in possession.

Land Index and registers must refer to distringas, disabling acts for

The Land Index and accounts of the ownership of the fee-simple of land and the registers relating to derivative interests must of course afford the means of reference in connexion with every registered interest in land to entries in

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protection of trusts, powers of leasing, and leases thereunder.

Operation of private acts under proposed system of registration.

the nature of a distringas, to disabling acts for the protection of trusts, and to powers of leasing, as well as to leases made in exercise of such powers. Reference to these provisions was omitted from the explanation of the general system of notation and indexing, for the purpose of avoiding an inconvenient anticipation.

It may be observed that, so far as regards the registered ownership of land, the operation of private Acts of Parliament passed with reference to land which had become subject to the proposed system of registration would be confined to the qualification or removal of disabling acts for the protection of trusts. Enactments authorizing sales or mortgages, the creation of powers of leasing, or any other dealing affecting a settled estate, would take effect as declarations of trust, in the same manner as similar provisions contained in settlements by deed or will. The necessary dominion over the registered ownership of the persons intended to exercise the powers of the act would be obtained by the qualification or removal of the disabling act for the protection of trusts. The provisions of an Act of Parliament of this kind would of course make it proper that it should be referred to as an instrument creating trusts, by any disabling act continuing to affect the registered interest to which it related.

London, July 1854.

Letter and Plan of Mr. Edward Thomas Wakefield, Barrister, (*Conveyancer and Equity Draftsman*).

To the Right Honourable S. H. Walpole, M.P., Chairman of the Registration of Title Commission.

Mr. E. T. Wakefield.

Sir, Lincoln's Inn, 1 May, 1856.

I assume that the ultimate object of the Commissioners is to effect an improvement in the Law of Real Property, not so much by increasing the security of title, as by expediting and cheapening the transfer of such property.

The primary causes of the expense and delay now incidental to its transfer may be referred to the number and variety of rights and interests which the law recognizes as capable of co-existing in respect of the same real estate, affecting the purchaser with notice, so as to render the release or extinction of such rights and interests necessary to the security of his title, and to the circumstance of real property being immoveable, incapable of manual transfer, and also a material substance having form, or external differences of configuration.

To attempt the solution of this question by pursuing any fancied analogy between the transfer of personal and real estate appears like cutting the knot we propose to untie.

The facility in the transfer of personal property is the result of its being always vested in persons having an absolute power of sale, who can give receipts for the purchase money, discharging the purchasers from any obligation of seeing to its application, and the result also of such property having for the most part a metaphysical existence only, being a mere obligation to pay money, therefore perfectly homogeneous in its nature, and devoid of external differences of configuration.

Every owner of a fee simple estate in land may, under the existing law, if he think fit, invest such property with some of the attributes of personal estate; that is, he may vest it in trustees with an absolute power of sale, and of giving receipts for the purchase monies. In some cases this is done; but to compel such a course in every instance, by an arbitrary statutory enactment, would, I apprehend, be open to objections, based upon social and political considerations, that would prevent the proposition ever being seriously entertained in this country.

I assume that no such organic change in the Law of Real Property is contemplated by the Commissioners.

The true problem to be solved, therefore, appears to be how materially to diminish the cost and delay at present attending the transfer of real estate, without curtailing or impairing the various modifications of tenure, the permanency of investment, and security of title, now incidental to the ownership of real property, or, in other words, without removing the primary causes of the cost and delay.

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The logical course would, therefore, seem to be, to examine the *proximate* causes, and see whether these are capable of being modified or removed. The proximate causes of the expense and delay incidental to the transfer of real property I presume are, firstly, the length of period over which the investigation of title runs; and, secondly, the length of the assurance.

The average interval between successive investigations of the title of the same estate may, I think, be taken at about twenty-five years, and each investigation, upon an average, as extending over a period of fifty years; it follows that the investigation of each title is, upon an average, repeated twice, involving a proportionate expenditure of unnecessary labour. This anomaly is no doubt justified by the assertion that each purchaser has an equal right to satisfy himself as to the validity of his title by an independent investigation, he having no means under existing circumstances of ascertaining the sufficiency of the preceding one. Now, one of the objects of the plan I am about to state is to supply such means.

I propose that official examiners, or investigators of title, should be appointed, to whom vendors and other persons might submit their titles; the duty of these officers being to investigate the title, and certify the extent and quality of the alleged owner's estate.

A registry to be established of certificates of title, or, more correctly expressed, a depository for their safe custody.

A copy of each certificate to be endorsed upon the assurance through which the owner claims to be entitled to the estate. The endorsement to be signed by the official examiner or the chief officer of the public depository.

Such certificate to confer a title good against all adverse claims originating prior to its date.

In all subsequent investigations of title the assurance, with the certificate endorsed thereon (where it certifies an estate in fee simple), to constitute the root of the title; that is, no subsequent purchaser to insist on an investigation of title antecedent to the date of the certificate.

This plan, according to the above estimate, would, by abridging the period, diminish the cost of the investigation of titles about one half.

But such a plan standing alone appears open to grave, if not fatal, objections.

It may be reasonably objected, that giving such force to the certificate of title would, in effect, take the onus of investigation from the person who now is and should be pecuniarily interested therein, and cast it upon a public officer, who is only indirectly concerned in the result. One of the practical consequences of such a system would be to hold out inducements—a premium—to fraud, for instead of the respective interests of vendor and purchaser being adverse or distinct they might in fact coincide. The vendor and purchaser might be induced, under such a system, to conspire to suppress evidence of an incumbrance of which they had notice; the vendor procuring the connivance of the purchaser by selling the estate at an undervalue. In a country with no public registry of title deeds the facilities would be equal to the inducements to such frauds. But even exclusive of these actual frauds it can hardly be doubted but that a system in which the pecuniary interests of the purchaser were not involved in the investigation would at least superinduce great laxity of practice more injurious perhaps in its general consequences than actual fraud. I have had to consider how far the difficulty could be obviated by making the certificate of no more force than the opinion of a conveyancer now perusing the title on behalf of the purchaser. I am satisfied, however, that such a plan would never work practically, nor indeed anything meet the exigency of the case, short of making the certificate confer a parliamentary title, as above stated.

It is to be borne in mind that the object of such a change was only to save expense, whilst the result might be to increase fraud, frauds too that might escape detection for years, perhaps generations. If, therefore, such difficulties could not be removed the plan would, I conceive, be open to fatal objections.

It is to supply this deficiency,—as a remedy for this defect,—as well as to diminish by other means the cost and delay now attending the transfer of real estate, that the other parts of my plan are designed.

I apprehend the question is finally reduced to this:—Is it practicable to devise any plan which would make the fraudulent suppression, or accidental omission, of a document of title impossible?

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The remainder of the proposed plan would, I submit, not only effect this object, but also materially diminish the length and cost of the conveyance.

I propose that upon the execution of an assurance a memorandum of it should be endorsed on the deed or other document, through or in respect of which the assurer claimed to be entitled to the estate assured.

I will designate these deeds respectively as the '*primitive*' and '*derivative*' deeds.

In like manner upon the derivative deed would be endorsed a memorandum noting, that such endorsement had been made, and upon what deed.

The memorandum on the primitive deed need contain only the date and names and descriptions of the parties in the derivative deed.

I will refer to the endorsement of these memoranda upon the primitive and derivative deeds generally as the "*enrolment*" of the derivative deed.

In the few cases where two or more deeds had the same date and parties they could be distinguished by a number or letter, with a reference to such in the memoranda.

The memoranda upon both primitive and derivative deeds to be deemed to give full notice to all parties claiming in respect of any deed subsequently enrolled of the contents of the documents respectively referred to in such memoranda.

It will be seen that there would thus be established a continuous system of reciprocal reference indissolubly connecting every title deed of the estate; the memorandum on the derivative deed referring to its primitive, and vice versâ; each derivative deed becoming itself a primitive deed in respect of the estate derived through it; until the last link in the chain of title was reached, when the absence of an endorsement would be conclusive evidence of the absence of any further incumbrance, or dealings with the estate.

The enrolment of a deed I propose should be made a part of the solemnities due to its complete and therefore valid execution, but so far only as to make an unenrolled deed void, as against all parties claiming adversely under an enrolled deed; the presumption being that it was not intended to affect parties claiming under an enrolled deed with notice of an unenrolled deed, but otherwise as to parties claiming under an unenrolled deed *inter se*, upon whom it should be binding.

In illustration, I will suppose the case of, first, a conveyance in fee; secondly, a deed of family settlement; thirdly, a deed charging a portion upon the estate under a power in the settlement; and, fourthly, a mortgage of such portion. Under the proposed plan of enrolment a memorandum of the settlement would be endorsed on the conveyance in fee, with a corresponding endorsement on the deed of settlement noting the same; so the deed charging the portion would be enrolled on the settlement, and the mortgage on the portion deed. Thus every person investigating the title would necessarily have notice of every document in any way affecting the title, for, as in the case put, the perusal of any one deed would infallibly lead to all the others successively. The conveyance in fee would give notice of the settlement; the settlement, of the deed charging the portion, and so on; or, commencing with the mortgage, there would be continuous notice until the conveyance in fee, the root of the title, was reached.

Such a system applied to the proposed plan would effectually ensure the official examiner against the suppression or omission of a single document or charge affecting the estate, and relieve him from the necessity of trusting to the integrity of the vendor, or relying upon the vigilance of the purchaser; for under it every document creating an incumbrance must be enrolled in order to its constituting a valid charge upon the estate as against a person claiming under an enrolled deed, and once enrolled would give the examiner notice of its existence and contents. The examiner's duties, so far as the discovery of incumbrances was concerned, would therefore be confined to simply ascertaining that the title deeds submitted to him really comprised all the documents enrolled upon them.

The result would be, that every set of title deeds, alleged to comprise all the title deeds of an estate, would contain, not negative, but internal and positive, evidence of the fact, if this were so, or, if not, then of the omission of any, and what, document of title. It would be impossible to obtain this result under the existing system, for although a set of deeds may really comprise *all* the title deeds of an estate, yet it is impossible to deduce absolute proof of this fact from the contents of the deeds alone. Consequently in perusing a title

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under the existing system, although it really comprise all the title deeds of an estate, yet as such a fact cannot be assumed or accepted until after a vigilant examination of title, it cannot, as in the proposed plan, become the means of saving expense or delay in investigating a title. The evidence of the *non*-existence of incumbrances under the existing system is only negative, and doubtful at best, whereas under the proposed plan it would be positive and conclusive.

The proposed plan therefore by making the fraudulent suppression, or accidental omission, of a title deed impossible, would effectually remove the great objection to the official examination of title.

There is a third portion of my plan which I will now proceed to state, and then consider it as a means of abridging the length and cost of the assurance itself.

I further propose that there should be established a public depository of *fac-similes* of title deeds, not for the purpose of registry in the ordinary acceptation of the term, but of their safe custody and convenient reference.

I propose that upon the execution of a deed a fac-simile of it, with the endorsements thereon, should be deposited in a public building for that purpose.

Each fac-simile to be arranged according to its date, and those of the same date according to the alphabetical order of the first party's name.

It would be desirable that an entry of each endorsement upon the fac-simile just deposited should be made upon the previously deposited fac-simile of the deed referred to in such endorsement, with a corresponding entry upon the deposited fac-simile of this having been done.

This latter precaution, though not essential to the working of the plan, would contribute to the efficiency of the depository.

The functions of the persons charged with the arrangements of the fac-similes would be extremely simple, almost mechanical; as they would not be required to peruse the fac-similes, but simply to arrange them according to their dates, the possibility of error would be precluded, or would become practically inappreciable, in a depository used only for occasional reference.

There are several mechanical processes by which fac-similes might be taken at less cost than copies.

The advantage of fac-similes over manual copies, duplicates, or "memorials" seems so obvious and decided as not to need further comment. Independent of the particular requirements of my plan, the establishment of such an institution would appear highly desirable upon grounds of general utility. It would be the depository in fact of documents possessing, as matters of secondary evidence, a value equal to the originals. The great value of title deeds,—their destructibility,—the impossibility of replacing them, when lost or destroyed,—the circumstance that several individuals may have, in respect of distinct rights, a concurrent interest in, and require access to, them,—and of their being the sole evidence of the ownership of real estate, and therefore a species of property in the preservation of which most persons are directly or indirectly interested,—are general considerations strongly recommending the establishment of such an institution.

Its functions would be important, as auxiliary to the working of the proposed plan. It will be observed that I propose that the endorsed memoranda should be deemed to give full notice to certain parties of the respective contents of the enrolled deeds.

Now there are many conceivable cases where such deeds might not be accessible to the parties thus affected with notice. Such a difficulty would be effectually removed by the proposed depository of fac-similes. For the memoranda thus operating notice would give the dates of the deeds they referred to, and the fac-similes being arranged in the depository according to such dates, every person thus affected by notice of a deed would possess a corresponding means of referring to its fac-simile in the public depository (which he could resort to), where the title deeds were, from any cause, inaccessible. On the other hand, no one *not* in possession of such a memorandum could refer to a particular fac-simile, the memorandum being the sole clue to its place in the depository.

Such an institution, therefore, whilst enabling every properly interested person to ascertain the contents of a deed, *would exclude all others.*

As cases would sometimes occur, under the proposed system, of persons requiring to enrol a document being refused access to the primitive deed, it should be provided that persons not having the custody of title deeds should be allowed access to them for the purposes of enrolment. The requisite endorse-

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ment could be made without the person making it obtaining further knowledge of its contents than the date and names of the parties.

Nor could such enrolment injuriously affect the interests of persons claiming under the primitive deed, and having the custody of title deeds, for the enrolment would be of a deed subsequent to, and made by persons having notice of, the primitive deed, and therefore taking subject to it.

I will now state how I conceive the proposed plan would operate to shorten the assurance itself.

In the first place, it would, I apprehend, dispense with the necessity and occasion for and, I presume, the use of recitals of title deeds. The chief object of reciting title deeds is, I conceive, to preserve secondary evidence of their contents in case of the loss, dispersion, or inaccessibility of the originals, and also to give notice to persons perusing each deed of the deeds recited therein.

Under the proposed plan each conveyance would have practically the same effect as if it were actually endorsed upon the antecedent title deeds, operating the same results, for the enrolment of the derivative deed would be notice of the contents of the primitive deed upon which it was enrolled to all persons perusing the derivative deed, as fully as if it were actually endorsed upon the primitive deed. And as for the preservation of secondary evidence, that would be much more effectually provided for than by recitals, the secondary evidence preserved by the depository being, in one respect, equal to the originals. There would be no more occasion for reciting title deeds than there would of reciting in a document the deed upon which it was endorsed. The enrolment would give the purchaser not an abridgment of the title deed, but notice of its full contents, and every deed would be indissolubly connected with every preceding title deed of the estate. There would be, therefore, I conceive, no useful end attained by continuing recitals of title.

For similar reasons it would be unnecessary to repeat in the derivative deed the description of the parcels, unless the parcels comprised in the derivative deed formed only a part of or otherwise differed from the parcels comprised in the primitive deed.

By dispensing with the recitals of title and descriptions of parcels convey ances would be abridged more than a third their present length.

I propose that the probates of wills of real estate should be placed upon the same footing as assurances, *inter vivos*, except that their enrolment (not being necessary to their validity) should be deferred until required by an assurance, *inter vivos*, of an estate derived through the will, when the enrolment of the probate of the particular primitive title deed should be made simultaneously with that of the assurance upon the probate.

I have attentively considered the plan to discover difficulties which might arise in the practical working of it, and can only suggest the following as entitled to consideration.

In assignments under the Bankruptcy Act to trustees for the benefit of creditors general words, embracing all the debtor's property, are usually employed. In some cases it might be doubtful what property the debtor was possessed of at the date of the assignment, and it might, therefore, be undesirable to require the immediate enrolment of the assignment, but it should, I think, be deferred, as in the case of wills, until there was a conveyance by the trustees under the creditors deed, when the latter should be enrolled upon the particular primitive title deed simultaneously with the enrolment of the conveyance upon the creditors deed; no practical difficulty would arise from thus postponing the enrolment of the creditors deed, for the only persons whose interest could be at all effected by it would be the creditors, upon the supposition of the debtor in the meantime conveying or encumbering the estate to persons without notice of the creditors deed; but the publicity required by statute to be given to such deeds in some cases would, if extended to all, secure the creditors against such a fraud. If this were found insufficient, there might be a special registry for such assignments.

Secondly, there are cases (chiefly confined to wills and family settlements) where land in the possession of an individual is divided and distributed by one assurance amongst several persons. Now, applying the proposed system of enrolment to such cases, it is apparent that as there would be nothing on the face of each memorandum connecting it immediately with the particular hereditaments comprised in the deed it refers to, so as to distinguish it from the memoranda of other deeds comprising other parts of the divided hereditaments,

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it would sometimes happen that the persons first investigating the title of a particular part of the divided hereditaments would have notice of other deeds without being able to discriminate them, as belonging to the title of other parts of the divided hereditaments. This result might be readily obviated by providing that memoranda of deeds, dealing with a part only of the hereditaments comprised in the primitive assurance, should, in addition to the date and parties, contain a verbatim copy of the description of the parcels comprised in the derivative assurances. This would enable a purchaser investigating the title of a part only of the hereditaments comprised in a primitive assurance to distinguish at a glance the memorandum of a deed comprising the hereditaments in question from those of other deeds comprising different hereditaments, without any practical inconvenience.

Thirdly, it might be objected, that occasionally doubts would arise in practice as to the particular deed upon which a memorandum should be properly endorsed. The objection is, I think, more apparent than real. The general object and effect of every assurance *inter vivos* is to assure the estate or interest of certain parties in certain property. The fact of such parties and the particular estate they intend to assure being known appears necessarily to presuppose the knowledge of the document through which the estate is derived. The contrary would seem to imply a contradiction in terms.

Moreover, it should be borne in mind that according to the proposed plan it is the unenrolled deeds only which are made invalid (as wanting in an act due to their valid execution); once enrolled, the assurance is valid so far as its formal execution is concerned. The only injurious consequence, therefore, of its being enrolled on a wrong deed would be, that it might be open to any one disputing the rights of parties claiming under the irregularly enrolled assurance to show that he had not thereby notice of its contents. But each memorandum, according to the above plan, giving notice of the contents of the deed thus enrolled to all persons claiming under assurances subsequently enrolled, it is hard to conceive a case where such a question of disputed rights could arise on the ground of non-notice. And lastly, if cases of difficulty did arise as to which of two deeds was the proper one for the enrolment of a particular deed to be made on, the difficulty could be at once disposed of by the enrolment being made on *both* without any inconvenient consequences.

4thly, the case of ordinary leases should, I think, form an exception to the proposed system, unless there were an express agreement to the contrary between lessor and lessee, which would be no more in effect than making the law conformable to the general practice at present; it being usual for the lessee and his sublessees or assignees to waive the production of the superior lessor's title.

The mere non-enrolment of leases need not operate injuriously to the purchaser, as the existence of such assurances can be ascertained by local inquiry.

The proposed plan would throw the *onus* of *construing* the documents of title upon the official examiner, it is true, but of course only where the construction was free from doubt. He would be only required to *detect* the existence of a difficulty; and where it did not concern the enjoyment of a real estate *in specie*, but assumed the nature of a charge or claim capable of pecuniary satisfaction, the examiners should be empowered to grant a certificate conferring a power of sale, subject to the purchase money being paid into court, or enough to meet the disputed claim.

There are many indirect advantages which would be secured by the proposed plan. I may refer to one in particular. Amongst the worst practical results of a public registry of title deeds *operating notice*, as in Ireland, is, that in proportion as the registry is relied on the title deeds lose their intrinsic value. It is the fact of a deed being registered, and not simply the existence of a deed, which then becomes the important question; the custody of the title deeds becomes a matter of minor importance; their dispersion and loss is the too frequent result, which, in Ireland, has been alone productive of evils more than sufficient to counterbalance the advantages of the institution.

But the proposed plan, instead of diminishing, would increase the intrinsic value of the title deeds, for the person possessing them would be able to show, without further evidence than that afforded by a superficial examination of the endorsements, that he really possessed every title deed of the estate; and if

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there were no endorsement upon the last conveyance to him, he would then be *primâ facie* the unincumbered owner of the estate thereby conveyed to him. The practical result would be to increase that valuable property which belongs to title deeds in a restricted sense, videlicet, that of their being to a certain extent symbols, representing the land itself, so that their manual transfer implies, to a certain extent, a transfer of the depositor's estate in the land. It is to this quality (possessed of course in a higher degree) that the extreme transferibility of personal property is secondarily due, and it is upon this quality also that the equitable deposit by way of mortgage of title deeds depends. In a commercial country like England the power of instantly procuring advances upon real property in this way is often of great importance.

I am persuaded that the tendency of modern legislation should be in this direction, as far as practicable to make the transfer of an arbitrary symbol operate as the transfer of the original. It is consonant with the usages of advanced civilisation, and the spirit of this age, and every legislative act which imposes a fetter upon this property is a step in retrogression. The tendency of the scheme I have proposed would be eminently in this direction.

It would, first, diminish the number of title deeds in proportion as the period for the investigation of title is abridged.

It would, secondly, confer on the title deeds a new quality; viz., that of containing internal evidence of the fact that no document was omitted necessary to a complete title to the estate. In both respects it would greatly increase their intrinsic value, as symbols representing the estate.

By a few provisions of a simple character equitable deposits of title deeds as a security for temporary advances, might be greatly facilitated, so as to defer for a period their enrolment and keep them of the title.

The system of enrolment here proposed does not involve the introduction of a new principle; on the contrary, it is in effect only organizing and extending a practice long known, and of late increasingly adopted.

The chief obstacle to its more extensive use (as, for instance, in the case of second mortgages) is, I apprehend, the difficulty, sometimes impossibility, of obtaining access to the title deeds. The proposed plan involves only the removal of this obstacle, and the extension of the principle of notice. It is, moreover, extremely simple in its details, and being familiar in principle would fall in at once with the habits and practice of the profession.

I may observe, in conclusion, that the proposed plan, or any change having a similar object, should be gradual, and therefore permissive in its application.

I would, however, prevent incumbrancers or others stipulating against the title of any estate being brought within such a measure. If such a measure were compulsory it must needs be violent and sudden in its operation, and so far essentially inapplicable to the removal of a chronic abuse. The system proposed to be modified or abrogated is ancient in its origin, and has been gradual in its development. The habits of the public have become, to a certain extent, adapted even to its imperfections. Interests of magnitude, and greatly complicated, would be involved in any such change. Instead, therefore, of regarding the slow application of such a remedy with regret, I think it is a subject of congratulation that the proposed change is one of those capable of being gradually effected.

I may take this opportunity of suggesting a change of law which, though a matter not of minor detail, would, I am convinced, effect much good.

I propose that the ad valorem duty should be reduced, and, in substitution, a tax imposed proportionate to the length of the document. For every half folio there should be an increase of duty, so as to make it really worth while to remunerate the conveyancer according to the *brevity* of a draft.

I have the honour to remain, Sir,

Your obedient servant,

EDW. THOS. WAKEFIELD.

Outline by Mr. E. N. Ayrton of some Statutory Provisions for carrying out the plan proposed by him in his Answers, Appendix Part E., for simplifying Investigation of Title by means of Powers of Sale and Personal Consents, without Registration.

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WHEREAS it is expedient to simplify the investigation necessary to be made into title to land by a purchaser: Be it enacted as follows,

"Land."

I. The term "land" herein shall include hereditaments of whatever tenure or nature they may be.

The right of disposition of the fee to continue conclusively against derivative estates until a document be executed, with protection provided for derivative estates.

II. Every right which, exercisable by a person for his own benefit without any one else's consent, now exists to dispose of land for an ownership in fee at common law, or according to custom, and every right which, incident to estate, shall (subject to the provisions of this Act) hereafter arise in any person to dispose of land as aforesaid, shall, conclusively as against every grant, assurance, appointment, devise, bequest, disposition, forfeiture, escheat, estate, and interest (except as by clause IX.) to be made, created, or occasioned henceforth in such first-mentioned land, or to be made, created, or occasioned after the arising of such future right in such secondly-mentioned land, be deemed at law and in equity to have, together with the right incident thereto of giving receipts to discharge purchasers thereunder, continuance in such person and his heirs, or customary heirs (as the case may be), unless and until he or they shall execute such document as next herein-after mentioned; but so always that estates and interests to be concluded as aforesaid shall have the benefit of the right of protection afforded by the provisions in that behalf herein-after contained.

The transfer document to be executed.

III. The document to be executed under clause II. shall be a writing, signed by the person aforesaid or his heir (as may be), and attested by two witnesses, and be as follows:

'I A.B. of [*the person aforesaid or such heir*] hereby declare 'that the right of disposition of the land mentioned in the 1st Schedule to this 'declaration is in me and my heirs [*or* my heirs according to the custom of 'Kent, *or* according to the custom of the manor of , *as the case* '*may be*], with the consent of the persons named in the 2d Schedule hereto '[*or*, is in C.D. of and his heirs, *or*, &c. *as before*, with the 'consent of the persons (*if any*) named in the 2d Schedule hereto], and that 'the receipts in writing of the persons named in the 3d Schedule hereto shall 'discharge purchasers taking under such right of disposition.'

The 1st Schedule to the Declaration.

The 1st schedule to the document, the parcels.

[*To contain a full description of the parcels, with all reservations and exceptions, and other like matters, according to the circumstances.*]

The 2d Schedule.

The 2d schedule, the consents.

The day of 185 .
M.N. of and his heirs, *or*, &c. [*and any other persons to consent*].

The 3d Schedule.

The 3d schedule, the receipts.

The day of 185 .
P.Q. of and his heirs, *or*, &c. [*and any other persons to join in giving receipts*]. Which document (including the Schedules), or the document (including its Schedules), which in that behalf shall for the time being

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be in force under the provisions hereof, is herein-after distinguished as "the transfer document;" and A.B. or C.D., or the person named in it as having the right of disposition, as "the transferor;" and herein-after the expression "a person named in the transfer document" shall include his representatives therein mentioned, and also a person not in being.

The transfer document not to refer to matters of title, but persons named in it to be defined by personal description.

IV. The transfer document shall contain no other matter whatever than as aforesaid; and all persons named in it shall be described or defined only by residence, profession, or other like description, or by or in respect of birth, death, or marriage; and consents and receipts may be therein limited by an express number of years, or by reference to birth, life, death, or marriage; and any description, definition, limit, or term, which in the transfer document shall be by or by reference to any document or matter of title to the land or otherwise than as aforesaid, or shall qualify the right itself, shall be void; and in the transfer document "heir" shall in all cases be understood to mean heir according to blood, without respect to seisin or admittance, or other like matter.

Copyholds and customary freeholds.

V. If the land be held by copy of court roll, or be customary freehold, the transfer document shall be countersigned by the steward of the manor, who shall add the date of his signature.

Right of disposition under transfer document conclusive against derivative estates.

VI. After the execution of the transfer document, the right of disposition of the land comprised in it, with such consents, and upon such receipts as aforesaid, or as may from time to time, under the provisions herein-after contained, be made requisite (according to the names (if any) for the time being standing in the 2d and 3d Schedules respectively), shall, conclusively as against all estates and interests as aforesaid (except as by clause IX.) to be made, created, or occasioned in the land after the date of the execution of the transfer document, continue at law and in equity, to be exercisable according to the tenor thereof, unless and until A.B. or C.D. or their respective heirs [*or*, &c., *as the case may be*,] shall, together with all other parties (if any) whose names shall be standing therein, execute a new transfer document under the like regulations as aforesaid; and so forth, upon the like execution of every successive transfer document, until execution of the then next transfer document; and herein-after all estates and interests to be concluded under clause II. and this clause respectively are meant by the respective expressions "the title represented by the right of disposition," and "the title represented by the transfer document."

Character and operation of the right and transfer document.

VII. Any right aforesaid shall not, as continued by this Act, nor shall a transfer document, make or create any estate or interest whatever in the land comprised in it, or any interest in the purchase money to be received thereunder; nor shall the transfer document be evidence of any such estate or interest in any person named therein, nor be of any further or other import or efficacy than that, as between the persons having such estates or interests as aforesaid (except as aforesaid) on the one hand and a purchaser taking according to the tenor of the transfer document on the other, the transfer document shall be conclusive at law and in equity against such persons and in favour of such purchaser to show that he has taken his conveyance from and paid his purchase money to the right persons, as to the land in the transfer document: the meaning and intent of this Act being that such estates and interests shall be made and created by the like kind of deeds and instruments as they would irrespectively of this Act; and that they shall, in conformity with such deeds and instruments, be represented by the names and matters in the transfer document; but that a purchaser for value, whether of the fee, or of any less estate, taking a conveyance and making his purchase according to the transfer document, shall not be concerned to inquire into such estates or interests as aforesaid (except as aforesaid), or to investigate the title to the land in relation thereto, or to inquire whether the transfer document truly represent such title, nor be affected with notice that it does not.

Intent of the Act. The transfer document not to supersede deeds and instruments for the making and cre-stion of estates.

But a purchaser according to it not to be obliged to investigate the title in relation thereto, nor to be affected by notice of them.

VIII. Any right aforesaid shall not as continued by this Act, nor shall a transfer document, be capable of being transferred, except on the execution of a transfer document, or of a new transfer document, as the case may be; nor shall a transfer document be capable of being deposited by way of security for money or otherwise, or of being dealt with as a deed or instrument of title, except within the meaning and intent mentioned in clause VII.; and accordingly,

The transfer document not to be capable of transfer or deposit, or of being dealt with as a title deed.

except

except as mentioned by clause X., the transfer document shall be deemed at law and in equity to be (loss or accident excepted) in the custody of the transferor for the purpose of disposition of the land, and other the purposes herein-after mentioned.

Exception of estates and interests not to be concluded.

IX. Estates and interests to be excepted as herein-before mentioned shall be:

1. Any lease of land in the lessee's occupation under the lease.

2. Any estate or interest taken by assignees in bankruptcy or insolvency, or by a judgment creditor, or in respect of any other matter (except an annuity or rentcharge payable out of particular lands of the grantor), which may by law be and shall have been registered at the Common Pleas in any name standing in the transfer document; provided that nothing in this Act in relation to any such judgment or other matter shall affect purchasers for value without notice thereof with any new liability: provided also, that no such judgment or other matter, in respect of which execution shall have been had in any land of the judgment debtor or person liable shall be within this clause.

3. Any estate or interest to arise to any lord of a manor or superior lord by forfeiture or escheat of or from any person whose name shall be standing in the transfer document.

4. Any estate or interest claimed under a title adverse to the title under which the right of disposition exercised is claimed.

Custody of transfer document where the fee is taken by assignees, or under judgment creditors, &c.

X. The right to the custody of all transfer documents relating solely to land which shall become vested in fee in any such assignees, or in any person by sale under a judgment or other matter which may by law be registered as aforesaid, shall go with such fee.

Assignees or devisees, or other persons taking the fee under the title, may require a transfer document.

XI. Any such assignee or person as last mentioned, or any devisee or other person taking the legal or equitable fee under a title represented by any right of disposition as herein-before continued, or by a transfer document, may require the person so having such right, or, as the case may be, the transferor and all persons standing named in the transfer document, to execute to such taker of the fee a transfer document, or, as the case may be, a new transfer document.

Right of protection to estates and interests which would be concluded.

XII. Any person acquiring in land an interest liable to be concluded by the exercise of a right of disposition under any provision herein-before contained, but which interest otherwise would not be concluded according to the title itself which shall be represented by such right or by the transfer document, shall according to his interest be entitled to have his own or a proper protecting name in a transfer document representing such title, and accordingly he may require the person in whom the right of disposition of such land is herein-before continued to execute a transfer document, or, if there be a transfer document in being and in force, he may require the transferor to allow the interest to be protected by an entry by the person interested of his own, or by such protecting person of his, name in the transfer document.

Erasure of a name from the transfer document.

XIII. Any person named in a transfer document may require the transferor to allow such person to erase his name from it, and such erasure shall be made by drawing a line through the name leaving it visible; and there shall be added in the margin the name and description of the person making the erasure, and the date of it.

Erasure.

XIV. Any person named in a transfer document, or any person interested under the title represented thereby, may, upon proof made to the transferor that any name in the transfer document ought not by reason of want of interest or otherwise to be there, require the transferor to have such name erased; for which purpose the transferor shall cause notice to be sent, by post or otherwise, to the person named, or to his representatives mentioned in the transfer document, or if none be mentioned then to his executors or administrators, who shall accordingly, if satisfied with the proof, erase the name in manner herein-before provided.

Rectification of the transfer document.

XV. Any person named or interested as aforesaid, or the transferor himself, may, in case the transfer document shall not truly represent the title so as to afford due protection to estates and interests, or shall require any other rectifi-

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cation, have the transfer document rectified; but so that no such rectification shall be made without notice to the parties concerned therein or to be affected thereby, and that every erasure or insertion of a name be made by the person named or to be named therein, or by a representative as herein-before provided.

Production of the transfer document.

XVI. Any person named or interested as aforesaid may require the transferor to produce the transfer document at all reasonable times, and may take a copy of it or of any part of it; and generally the transferor shall hold the transfer document as a trustee for such persons; but so nevertheless that the same shall not thereby be prevented from running with the land upon the execution of a new transfer document.

Persons not in being or under disability.

XVII. If any person entitled under the provisions hereof to any protection by, or other right in respect of, a transfer document, shall be a person not in being, an infant, married woman, lunatic, person of unsound mind, or absent beyond sea, the right may be exercised on the person's behalf; and it shall be deemed by the Court of Chancery to be a trust hereby imposed on all trustees by settlement or other instrument or constructively, guardians, husbands, committees of estate, and persons holding general powers of attorney for others beyond sea to exercise the right, according to their knowledge of it, as the respective persons, objects of their trust, care, or duty, might exercise it.

Judicial notice of want of protection to such persons.

XVIII. All judges of the superior courts of equity and law shall judicially notice and remedy any such danger or prejudice to an interest of any person not in being, or under disability mentioned in clause XVII., as shall arise from want of due protection by a transfer document.

Jurisdiction.

Appeal.

XIX. Any right herein-before given of protection by, or given with respect to, the transfer document may be enforced by application in chambers to the Master of the Rolls or a Vice Chancellor or a Judge of the Common Pleas, with a right of appeal by special case from the decision of such judge to the Lord Chancellor, the Court of Appeal in Chancery, or the Court of Common Pleas, and a further right to carry such special case on appeal to the House of Lords: provided that nothing herein shall interfere with the existing jurisdiction in case of persons found by inquisition lunatic or of unsound mind.

Purchase money impressed with equities of estates which, according to the title, ought not to have been concluded.

XX. Money received on the exercise of any right of disposition herein-before continued, or of any such right exercisable under a transfer document, shall become impressed in equity with all interests which, according to the provisions herein-before contained, shall be, but, according to the true state of the title represented by the right of disposition or by the transfer document, would not (but for such provisions) have been, concluded by such exercise of such right.

Fraud.

XXI. Nothing herein shall alter or affect any statute or jurisdiction or doctrine of law or equity regarding fraud; but so that notice of want of accord between a right as herein-before continued, or a transfer document, and the title represented thereby respectively, shall be no ground for imputing fraud to a purchaser for value according to such right or transfer document.

Appendix, Part D.

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Wednesday, 23d August, 1854.

Mr. WILLIAM BLAMIRE (*Copyhold and Tithe Commissioner*) called in, and examined.

Mr. W. Blamire.

23d Aug. 1854.

1. (*Mr. Wilson*).—I believe you are one of the Copyhold Inclosure and Tithe Commissioners?—I have the honor to be so.

2. I need hardly ask whether you have not had much experience in the application of maps to various purposes?—I was appointed a Tithe Commissioner upon the passing of the Act eighteen years ago, on the 13th of August 1836.

3. Will you kindly give us some information as to the extent of country which has been mapped under the Tithe Commission?—I can scarcely answer that question with perfect accuracy. I think the actual quantity would probably be somewhere between twenty-five and twenty-six millions of acres under the Tithe and Inclosure Commissions, taking the two together, and assuming the total acreage of England and Wales to be thirty-seven millions of acres.

4. That would be considerably more than half of the whole country?—Yes, a great deal more than half of the most important part of the country. The part remaining unmapped is, to a certain extent, wild mountainous country.

5. I believe there are two classes of maps, the first and second class, one which you certify, and the other which you do not?—Under the provisions of the original Tithe Act the Commissioners could not adopt any map excepting an accurate map. They call accurate maps first class maps. It was extensively represented on the part of landowners that this provision in the Act would subject them to unnecessary expense; and at the solicitation of the Tithe Commissioners, the matter in question was referred to a Select Committee of the House of Commons, who decided to recommend such an alteration of the Act as would give the Commissioners power to adopt any map that afforded the means of identifying the properties dealt with. The Commissioners looked upon this alteration of the Act as a great misfortune, and they did all that they, as Commissioners, could do to induce the Legislature to withhold their sanction of the proposed alteration.

6. But still, even for the purpose of the Tithe Rent Charge, it is necessary that the land should be accurately identified, is it not?—Clearly. Of accurate first class tithe and enclosure maps, I think we have nearly 3,000 confirmed and in progress. Then again, we have other maps which are, it may be presumed, sufficiently accurate for general purposes. We have no reason to suppose they are not. They were not, however, subjected to the test of being scaled and critically examined. Of such maps I think we have about 9,000.

7. (*Mr. Walpole*).—Then these 9,000 range under neither the first nor the second class?—The Commissioners have only two classes of maps, first and second class. A large proportion of the second class maps are considered in the main available for every general purpose. A comparatively small number of the second class maps, having been made with reference to certain special provisions of the Tithe Act, would be useless for any other purpose.

8. (*Mr. Wilson*).—I understand there are 3,000 first class maps which are certified?—Not quite 3,000, but nearly that number of tithe and inclosure maps.

9. And 9,000 second class maps, which are tolerably good?—I fancy a large proportion is sufficiently good for nearly every purpose. There are 11,746 completed apportionments to which maps are attached, whilst there is a certain number in progress. Of inclosure maps completed and in progress there are 600, all first class maps.

10. The inclosure maps are all good ones, are they not?—Yes. First class maps (regularly tested) of the lands dealt with under the Inclosure Act.

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11. What is the annual amount of the Tithe Rentcharge?—£4,011,846 at the close of the last year.

12. Has there been any considerable practical difficulty in applying the rent-charge to the proper lands?—None whatever. It is the special duty of the Commissioners to take care that the interest of the tithe owner is so protected that there can be no loss to him, unless from his own laches.

13. (*Mr. Walpole.*)—You apply that to either class of maps?—Yes.

14. (*Mr. Wilson.*)—What is the main difference between the first and second class maps?—The difference is this, that in the first class map it is ascertained that the system of triangulation adopted is perfect and complete *per se*, and next that the filling up of the triangles is accurate, and that the acreage given is fairly represented by the maps. In the case of second class maps the Commissioners are not called upon to subject parties to the expense of such examination and testing.

15. You mean the subsequent examination and testing?—Exactly.

16. Then the maps originally are made by the same class of persons?—Yes.

17. An equally experienced class of persons?—Very often they are; indeed generally they are. The difficulty has been to induce persons to submit their work to the official examination of the Commissioners. Many of the old surveyors of the country said, "Neither our maps, nor our fathers', nor our grandfathers' were ever called into question *qua* accuracy, and we do not know why the Tithe Commissioners should now assume the power to test our maps, and we shall advise all parties who have confidence in us to refuse to permit our maps to be so tested."

18. (*Mr. Cookson.*)—On the ground of expense?—Yes; coupled with the feeling that it was an indignity to a man of reputation and long standing as a surveyor to have the accuracy of his maps called in question.

19. (*Mr. Wilson.*)—With regard to the second-class maps, have you had their accuracy materially questioned?—In some cases; and in one instance the accuracy of a first-class map was contested, and unfortunately the Commissioners were proved to have been wrong. I hope I may be allowed to state that it was a case in which Lord Overstone was interested, in the parish of Addington, Surrey. A Windsor surveyor made the map; he was a very competent man himself, but he employed a young surveyor to make the survey, who, finding some difference in the projection of the lines on paper, assumed that the field record of the measue ments was wrong, and not the measurement itself; whereas it appeared afterwards that a line had been projected from a wrong point on the paper. He attempted (but unsuccessfully) to rectify the apparent error by altering the field notes, thus producing a compensation of errors. I mention this case from knowing that it has attracted attention elsewhere.

20. What I meant was, whether you had any reason, generally speaking, to be dissatisfied with the accuracy or supposed accuracy of the second-class maps?—Certainly not, for our purposes.

21. Supposing it to be determined that there shall be a registration of title to land, and that for the purpose of that registration there shall be a description of the land, is it desirable in your opinion that that description should be based on a map?—Unquestionably. I cannot conceive how a map can be dispensed with. That map itself [*a map produced by Mr. Cookson*] shows the difficulty, if not the impossibility.

22. Is it possible to describe the boundary so well by words as by the kind of picture which the map affords in aid of words?—No, certainly not.

23. Is there any greater necessity, in your opinion, for a map being mathematically accurate, than for a verbal description being mathematically accurate?—I should think not. The map in the case of large properties clearly need not be critically accurate. In the case of small parcels of land, the boundaries of which are not fenced, or the fences of which are liable to be obliterated, I think the map should be accurate.

24. But supposing it to be determined that we shall have a description of some kind or other, would not a map that was not quite perfect be better, in your opinion, than any mere verbal description?—Oh, clearly! I do not think a mere verbal description would answer the purpose without the use of a map; whilst I think that in the case of small parcels the map should be critically accurate.

25. In any use of a map you would also have a book of reference to it?—Certainly.

26. Well, is not a book of reference a verbal description illustrated by a picture?—The book of reference is a statement of the acreage, the *locus* of which is illustrated by the map.

27. What I was addressing myself to is this. It is a very common impression that you cannot work with a map unless the map is perfectly accurate; supposing we determined to work with some kind of description or other, would not your second-class map be better than a verbal description without a map?—Certainly; and it would, in my opinion, be perfectly sufficient for ordinary purposes. Assuming that the registration proceeded parochially, and that the parish contained both large and small estates, I should say that a second-class map would be sufficient for the registration of the large estates, but that an accurate, and under certain circumstances an enlarged map of the small parcels should, when necessary, be attached to the original map.

28. (*Mr. Walpole*).—What is the scale of your map?—It varies. The general scale is three chains to the inch. *Mr. W. Blamire.*

29. Then for the small properties you would want a scale of what size?—One or two chains to the inch, according to the size of the properties. We are constantly in the habit of attaching to original plans maps upon a larger scale, as in the case of villages, towns, and minutely divided properties, where it is necessary to show the exact metes and bounds. 23d Aug. 1854.

30. How many chains to the inch do you take for those maps?—One or two.

31. (*Mr. Wilson.*)—Then the only difference is, that if the property is small the scale must be large?—Exactly. But that would not, in my opinion, prevent use being made of second-class maps in their present state, in the case of estates of a certain extent. It is the practice of the Tithe Commissioners to set out on the margin of the map and on an enlarged scale, villages or towns, or properties divided into minute parcels.

32. If the maps, such as you have, had been insufficient to identify the lands, you would have met with all kinds of difficulties, would you not?—Yes. The Commissioners would not have been justified in using maps insufficient for every purpose of identification.

33. I believe there have been important extensions of your powers as to drainage and other purposes, have there not?—Yes. Under the superintendence of the Inclosure Commissioners four millions of money have been lent by the Government for drainage purposes; and under the same direction considerable sums of money have been borrowed under the private money Drainage Act. The proceedings of four Drainage and Improvement Companies' Acts have also been placed under the same direction.

34. All those matters are conducted by means of maps?—Almost universally so in England. There are exceptions in Scotland, where a charge is taken upon an estate as a whole.

35. And (confining ourselves to England) you could not do without the maps?—It is desirable, if not actually necessary, to have maps of the several estates given in charge to the Government for the purpose of recovering arrears in case of need.

36. Have not the Inclosure Commissioners powers of exchange?—They have large powers of exchange, which are being acted upon very extensively, and under which properties involving large mutual interests are continually being dealt with. The advantage of so cheap and inexpensive a mode of exchanging properties appears to be now so generally appreciated, that the numbers of applications are becoming very great. I ought to add with reference to maps, that maps of the lands given and taken in exchange are indispensable.

37. Then your whole machinery is founded on maps, from begining to end—everything you do, almost?—It is, and could not well be otherwise.

38. Could we, do you think, make use of any of the existing maps for the purpose of registering Titles—I do not ask you how the Title is to be registered?—Of course that is a matter I know nothing about; but I can have no hesitation in saying, that in every parish, if you proceed parochially, of which there are maps in the Office, there would not appear to be the slightest difficulty in preparing for the purposes of registration an accurate statement of the owners of the lands, and a map showing their respective lands. Perhaps I may be allowed to add, that I conceive the economy in furnishing such materials would be a great inducement to landowners to register, assuming such proceedings to be voluntary. With this view, I have calculated the probable expense; I assume that the average quantity of land in each parish in England and Wales, excluding mountainous and other waste lands, would be about 2,500 acres. In assuming 2,500, or from that to 2,800 acres, to be the average quantity of each parish, I have good reason to believe these quantities are above rather than below the actual quantities. Then I will suppose the Tithe Commissioners to be called upon to furnish the requisite statements, and if so, the process would, I conceive, be this:—They would prepare from the apportionment a statement of the names of the several owners and occupiers of the respective lands, at the time the commutation was effected. They would then ascertain from the parish officers what changes, if any, in the ownership and occupation of the land had taken place. Supposing no change to have taken place, it would be sufficient to send down a copy of the apportionment, showing the names of the owners and occupiers and the acreage in detail of their several lands, with a tracing of the map, to be deposited for some given length of time in the parish, in order to ascertain what objections, if any, were taken thereto. Under the 6 & 7 Will. 4. c. 71. s. 12., an owner of land means and includes every person who shall be in the actual possession or receipt of the rents and profits of any lands, saving certain classes of exceptions. The expense of the preliminary copy of the apportionment and of the tracing would amount to less than 5*l.* in the case of an average parish of about 2,500 acres. Assuming that no objection was taken by any one, either as to the boundaries of the lands or otherwise, I should think that upon the several owners in the parish testifying their acquiescence in the correctness of the deposited document, by signing a certificate to that effect, there could be no occasion to send any one to investigate the circumstances upon the spot. Then the ulterior proceedings of furnishing a copy of the apportionment on parchment, and a copy of the map, would not exceed 15*l.* to a private individual. I apprehend, however, that for public purposes, such documents might be supplied on lower terms, viz., at the cost price, probably 10*l.* or 11*l.*

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39. (*Mr. Walpole.*)—Then you think the cost of a map prepared by the Tithe Commissioners of a parish of 2,500 acres, would average from 10*l.* to 12*l.* ?—From 10*l.* to 15*l.* would be the price charged to an ordinary customer. It is the practice of our office to charge the public 25 per cent. more than the actual cost of the work; the difference being paid to the Government for house rent and various other charges.

40. (*Mr. Wilson.*)—You seem to be of opinion that the list of ownership under the Tithe Act might be of some use in registering Titles ?—Yes.

41. You mean, of course, only presumptively, and that the parties should have the liberty of showing that the statements were wrong, if so ?—Surely.

42. If an objection were put in, how would you propose to proceed ?—If the objection had reference to the boundary of a certain estate, or as to the boundary of a parish, the matter might be inquired into and disposed of, after or without appeal.

43. (*Mr. Walpole.*)—Have you a list of the ownerships of all the property in the parishes that are mapped ?—Yes.

44. You do not revise those lists periodically ?—No; in cases of divisions of property being required, the Commissioners do so with reference to such properties only.

45. Then when you make a new division of property do you make a new map applicable to that property which is divided ?—Only when the original fields are sub-divided.

46. At whose expense is the map made ?—At the expense of the parties requiring the alteration.

47. How do you connect the altered apportionment with the original instrument ?—By means of the reference numbers to the map, which are set out on both instruments.

48. Do you keep an index of the names of those owners ?—No; that is not necessary for tithe purposes, and it would be a large undertaking to do it.

49. Are the names of the owners given in the maps ?—Not on the map, but in the apportionment attached to the map the names of the owners are given, together with a number referring to each close of their lands represented on the map.

50. That is what I meant. Then there is a number on the map, attached to each division of property ?—Yes.

51. And that number corresponds with a number given in the apportionment referring to the lands of each individual owner ?—Surely.

52. (*Mr. Wilson.*)—Each separate field on the map has its number ?—As a general rule, it has; but not necessarily so, because the landowners have the power to get the rent-charge apportioned either field by field or estate by estate. The consequences of affording such an option were probably not foreseen at the time. It is now generally admitted, that it would have been much better to have had the apportionment made in every instance field by field. In consequence of a more complete apportionment not having been made in the first instance, much additional and expensive work has been occasioned. Landowners, finding that the extent of their several farms has been changed, come to the Tithe Office to ask for an altered apportionment, which otherwise would have been unnecessary.

53. Supposing, for the purpose of registering Title, we should wish to have the copy of the map examined to see if any changes of boundaries had taken place since it was made, would that be an expensive operation ?—No. The revision of a parish map, as to boundaries, would not ordinarily be attended with much expense, By the original Tithe Act, the Commissioners were authorized, subject to appeal, to settle all disputes concerning the situation or boundary of any lands whereby Tithe awards were hindered. On proceeding to act upon those powers, the Commissioners found that the landowners contested determinedly and expensively the correctness of the boundaries proposed to be adopted; not because the Tithes, which were alone affected by such boundaries, were worth consideration, but because the landowners feared that by allowing a certain boundary to be established for Tithe purposes, such boundary might become eventually conclusive for all purposes. The Commissioners being unable to remove this impression, made application to the Government to be authorized to set out boundaries, and to make them final and conclusive for all purposes, subject to appeal. Upon investigation, the parties frequently arranged their disputed boundaries by compromise. It appears, however, that under the Tithe Act 181 formal decisions have been given, exclusive of those compromised, whilst under the Inclosure Act, 33 decisions have been given. It is presumed that the cases in which parochial boundaries are still disputed and unsettled are but few. In many cases of disputed boundaries the Commissioners were called upon to decide, but no formal decision was eventually given, all disputes having been compromised.

54. (*Mr. Walpole.*)—The parties acquiesced in the decisions in the other cases ?—Yes, generally without appeal.

55. (*Mr. Cookson.*)—You are speaking of parochial boundaries ?—Yes.

56. (*Mr. Walpole.*)—That is, not the boundary between property and property ?—No.

57. Only where the property is bounded by the parish ?—Surely. The boundaries between the properties of individuals were dealt with in cases of dispute, not by giving a decision similar to one of those decisions in the case of a parochial boundary, but they were dealt with before the Assistant Commissioner attending in the country to hear appeals against the apportionment. Evidence was produced, and they were settled and decided without giving a formal boundary decision. It may be right to mention an imperfection in our proceedings which experience alone could have enabled us to remove. The plans of parishes were made, in the first instance, by the valuer, who collected his

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information on the spot, and only in cases of dispute or mistake did the matter occur for the decision of the A sistant Commissioner. We have a number of parochial boundaries that are not correct in this respect, A dispute exists between two parishes, and each parish has included in its apportionment certain lands in the way of overlap from one parish to the other. That difficulty would have been obviated if, together with the apportionment for any particular parish, the Commissioners had deposited the apportionments of the adjoining parishes; but they had no power to do so, and even if they had, assuming the boundaries to have been incorrect in the apportionment first made and confirmed, the Commissioners had no power to rectify the error. If they had deposited the apportionments at one and the same time, then the landowners would have been aware of the claims made by a neighbouring parish, which they were either not aware of or not attentive to. I merely mean by that to show that it would have been very desirable in all these cases to proceed with a certain number of contiguous parishes or districts at one and the same time, with a view to the equitable settlement of all matters of boundary.

58. (*Mr. Wilson.*)—Suppose on taking up the map of a parish it should be considered necessary for the purpose of the Registration of Title to have each actual division of property shown on the map, not as it existed ten years ago, but as it exists at the present day, would it cost much to have the tithe map looked over for the purpose of inserting any new division of property which may have taken place since the map was made?—It would not be attended with much expense in merely agricultural parishes; in suburban or manufacturing districts where the changes of property are more frequent, the expense might be considerable.

59. It would not be like re-surveying a parish?—No I cannot conceive that under any circumstances the expense would be so great, and in a considerable majority of parishes the cost would be but trifling. It would involve the expense of some competent person being sent down to the spot.

60. (*Mr. Walpole.*)—What was the cost originally of making a map of a parish containing 2,500 acres?—It varies from a shilling an acre to fourpence an acre.

61. From fourpence to a shilling an acre?—Yes.

62. It might be as high then as 125*l*?—Yes.

63. (*Mr. Wilson.*)—Is there any practical difficulty at the Tithe Office on the occasion of a subdivision of property in correcting the changes of boundaries?—No, that is a work of frequent occurrence.

64. That is frequently done?—Yes, to a large extent. We have 976 confirmed altered apportionments in the Tithe Office at present, and many of these include the alteration of boundaries.

65. (*Mr. Lewis.*)—The sub-division of fields only comes before you with reference to the altered apportionments?—Only with reference to the altered apportionments; not necessarily with reference to a change of ownership.

66. (By *Mr. Wilson.*)—But wherever an altered apportionment arises from a subdivision of property there is no difficulty in annexing the sub-division to the original map?—Oh no.

67. (By *Mr. Cookson.*)—In what manner is that done?—By attaching the altered apportionment to the original apportionment.

68. (By *Mr. Wilson.*)—With a sub-map?—With a map in those cases where a map is required; that is to say, when the original fields are subdivided. In other cases where entire fields alone are dealt with, the original map serves the purpose of the altered apportionment.

69. (By *Mr. Cookson.*)—There is no sub-division in that case?—No.

70. (By *Mr. Wilson.*)—Supposing we were to proceed to map lands for the purposes of registering titles, would it not be desirable that we should proceed by parishes and not by individual properties?—I think so. If you proceed by individual properties, you would be subject to the inconvenience which I have expressed by over-laps between two parishes. A landowner in the absence of a neighbouring landowner might claim more than he was fairly entitled to.

71. And then the different properties registered would not fit?—No. It is a great matter to deal with a certain extent of land at one and the same time, as the parties interested are more especially alive to the propriety of discovering and sifting any improper claim.

72. Then you are of opinion that in whatever way we register Title it would be desirable to begin with a map of the whole parish?—I should think so; at least I cannot conceive it being safely done in any other way. You know in almost all cases the aggregate acreage of each parish, and you can account for that in detail clearly and satisfactorily.

73. Would there, in your opinion, be any injustice in allowing a large majority of the Landowners in a parish to determine to have the whole parish registered?—No, I should think not. The larger proprietors would be more likely to concur in such a measure from being aware of the advantage of registration, which the smaller ones would not be to the same extent; at all events, the latter would look more to the money to be spent than to the advantages to be derived from the outlay.

74. And if there was any difficulty with regard to money, might not the parish itself be called on to raise the money?—Then you would raise it in the proportion of each man's property.

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75. Col. Dawson, in some evidence which he gave, stated that ordinary persons, not used to maps, sometimes met with a good deal of difficulty in finding their properties in the map. Is that so in your experience?—Yes, that is so, in cases where an inexperienced person comes to examine the map. It is no easy matter to find all the numbers, say from 1 to 100, where there are 1,000 numbers widely dispersed over the map. You have no difficulty where the properties are in blocks, or in other words, where all the numbers belonging to a particular property lie together; but where properties are dispersed, there is considerable trouble, which an inexperienced person feels.

76. Would it not be an advantage to have some kind of official certificate, which would enable parties to have before them an actual statement of the property proposed to be dealt with, together with the numbers?—I would suppose that if the registration proceeded parochially, and was made from the maps in the Tithe Office, you would do this, viz.: You would set out *A.* as a proprietor, with a certain quantity of land, and you would put a letter or other symbol on all his fields. You then come to *B.*, and you do the same thing. That would be an easy mode of identifying the entire property of any man in the parish; or you might represent the same by means of colours.

77. Do you not think that we should not be able to depend on the statement of ownership in your office for such an important purpose as the actual registering of Title?—I think not. You must, however, bear in mind that the owner of the property has usually paid the expenses incident to the commutation, and although he may not in every case be the legal owner, yet in most cases he certainly would be so.

78. Then you think that a list of the persons registered as landowners might be admitted presumptively, subject to objection?—Clearly not without investigation.

79. (*Mr. Lewis.*)—You frequently take a mortgagee or a tenant for life as sufficient for the Tithe Commutation?—We take the owner of the rents and profits as the party actually interested.

80. The party actually in possession?—Yes.

81. You do not investigate what is the nature of his interest?—Oh dear, no.

82. (*Mr. Wilson.*)—You lithographed some of the maps at first?—Yes; we lithographed a considerable number.

83. Was there any great demand for them?—No; we sold but few.

84. (*Mr. Walpole.*)—What was the cost of them?—Very little; two or three shillings in some cases, one shilling in others.

85. (*Mr. Wilson.*)—Supposing you require three copies of a map, it is as cheap to have them lithographed as to have them copied by hand, is it not?—I am not prepared to say it is, but it it is somewhere thereabouts I think.

86. Do you think we can have any material assistance from the Ordnance Maps: they are now proceeding on a scale equal to your first-class maps, are they not?—Those hereafter to be made will be on the scale of $\frac{1}{2500}$th. The four northern counties are still to map, and a portion of Yorkshire, and I think a portion of Lancashire also. Lancashire, Yorkshire, Wigton, and Kirkcudbright have been surveyed by the Board of Ordnance, upon the scale of six inches to the mile.

87. (*Mr. Cookson.*)—That is about one to ten thousand?—Yes.

88. (*Mr. Wilson.*)—That scale is now given up, is it not?—Yes.

89. Then the scale now adopted would be large enough for any purpose?—For every purpose.

90. And they intend to spend a considerable sum every year?—I believe 100,000*l.* a year.

91. Col. Dawson has some sheets of the Ordnance Map, on which the parishes possessed of first-class maps, and those possessed of second-class maps, and the unmapped parishes are distinguished by three different colours; would you kindly let us have one of them another day to look at?—Yes, certainly.

92. I have one more question to ask you about the revision of maps. Suppose we had a correct map of a parish to start with, would it, in your opinion, be necessary for the purpose of registering titles, that that should be revised periodically or not?—I should think it would be in certain districts: namely, in those districts where property changes hands frequently. In manufacturing districts for instance, the alterations of the original map would be so extensive, that after some years, (say twenty years, or as often as might be deemed necessary,) I should think it would be desirable to have the map revised and a new map made, but only in those cases where property often changes hands.

93. Would the expense of revising a map be anything like the expense of making a new map, unless the changes had been very great indeed?—Certainly not, and I believe it will be found that in many cases the tithe maps will not require any alteration. Where the boundaries of fields or of the other subdivisions of property have not been affected, and the original tithe map is fairly available for registration purposes, the expense would not be great. In some cases, however, of defective maps, the expense of revision and of adapting them to registration purposes would necessarily be considerable, but in other cases, the expense would not be great.

94. (*Mr. Lewis.*)—It would be necessary to see what changes had actually taken place?—Yes.

95. (*Mr. Wilson.*)—I believe in the Tithe Office you can turn to any map in a moment can you not?—Yes, the Commissioners cause the maps to be very carefully registered, and can produce any map they have in two or three minutes, and it is necessary they should do

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so. The conveyancers of the present day make great use of the information to be had in the Tithe Office. Numbers of people come to the office daily to examine maps, and to get particulars of certain properties, and tracings of those properties, which they attach to conveyances in place of or in elucidation of the old and original designation of the property. That has been going on to a great extent.

96. (*Mr. Cookson.*)—Is any fee paid on the inspection?—Half-a-crown. Numbers of people come to inspect every day.

97 (*Mr. Wilson.*)—Has that been increasing rapidly?—Yes.

98. (*Mr. Lewis.*)—They use your map in sales by auction?—Yes, and I observe in advertisements in country papers when property is to be sold there are references to tithe maps.

99. Number so-and-so on the tithe map?—Exactly.

100. (*Mr. Walpole.*)—Is the map attached to the conveyance?—The tracing and the particulars are copied and attached to the conveyance.

101. (*Mr. Lewis.*)—At all events the number is adopted?—Yes, and I think the copy of the map. My reason for saying so is this, that a provision was introduced into the Stamp Act of 1850, to the effect that, if in a conveyance reference were made to any other instrument, that instrument, in order to be given in evidence, should bear a certain stamp duty increasing with its length, from which duty tithe apportionments are exempt. It therefore became necessary, that the Commissioners should apply for a modification of that enactment, as many of these apportionments are of great length, and if the progressive duty were charged, it would be fatal to the system. The Government, however, were good enough at once to make the required concession.

102. (*Mr. Wilson.*) In many cases copies of your maps are adopted for general purposes where no altered apportionments have been applied for?—Yes; we are often applied to for information from our documents for a variety of purposes.

103. You are of service in that auxiliary way?—Surely. It is our duty to make the documents in our office subservient to public purposes as far as we can.

104. (*Mr. Cookson.*)—On what evidence do you make alterations in apportionments?—At the request of the party claiming to be the landowner.

105. Do you ever alter the original map?—No; we have no power to do so.

106. Do you add a supplemental map?—Yes, auxiliary to the original map.

107. (*Mr. Wilson.*) And referring to the numbers on the original map?—Yes.

108. (*Mr. Lewis.*) And varying the number in this way, "496 *a*, 496 *b*"?—Yes.

109. But not altering the figures?—No; not altering the original figures, but adding auxiliary letters to the numbers.

110. (*Mr. Wilson.*) Supposing we were to commence a system of Registration of Title, we might perhaps advertise a list of the parishes that have maps, and any one of those might come in and ask to be registered?—I ought to state that in certain parishes we have maps of all the lands which they contain. In other parishes we only have maps of the titheable property; and there may be some properties not titheable, and which do not appear, but the extent of which could easily be got.

111. (*Mr. Lewis.*) You said just now you thought there could be no objection to a majority of land owners in a parish binding the rest in agreeing to a system of Registration of Title. You would not form that opinion irrespectively of the consequences which the enactment in question might attach to the omitting to come in and register?—I scarcely understand the question.

112. Suppose the Act were to say that unless within two years any one having an interest in a given piece of land should come in and make an objection to the map at a given place, and to have an alteration made in the book of reference to the map, he should be deprived of his interest in that land; your opinion would not go to such an extent as that?—Certainly not. It would depend on the peculiar circumstances.

113. (*Mr. Walpole.*) You do not mean to make the map conclusive evidence of the boundaries of property?—Certainly not; only as an auxiliary.

114. Do you think any of your first class maps are now sufficiently accurate, not merely in themselves, but with regard to the alteration of property that has subsequently taken place in those parishes, to constitute the foundation for a good registration of ownerships?—Without inquiry it would be impossible to ascertain what alteration in property had taken place. They would be sufficient, I should fancy, for the purpose of registration, assuming no alteration had taken place.

115. Then you have no means of informing the Commissioners of the extent of alterations that have probably taken place since the time these maps were made?—No; that can only be obtained by communication with the parish officers.

116. Therefore you can give us no accurate information as to whether a system of Registration could commence with the present maps now in the Tithe Commissioners Office?—They certainly could not commence with the maps in the office at present, excepting after such investigation and revision as were required.

117. Then in all cases, if you wished to apply the system of registration of ownership to different properties in any parish, you would either have to revise an old map or to make a new one?—Yes. If alteration in the boundaries of closes of land had taken place the old map would require alteration to that extent; but where the ownership only had changed, the substitution of the present landowner's name would answer every purpose.

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118. What do you suppose would be the expense of that to a parish, taking the average at 2,500 acres, first in a rural and then in a town district?—I take it for granted that there are very few parishes at present in which there are not tolerably accurate maps to be had. For the Poor law purposes a great many maps have been made. Of those maps we have tracings in the office, because they are tested by Colonel Dawson. There have been also many maps and surveys made for the purpose of rating which might be had from the parishes, but which maps were not submitted to the Poor Law Commissioners.

119. You could not adopt any of those maps without testing them to see if they were accurate?—Not if they require to be critically correct as first-class maps; but for the purposes of registration they would require to be subjected only to the same examination as the ordinary tithe maps.

120. I rather wanted to get at the expense of applying the system of Registration to a rural parish to begin with, and afterwards to a town parish, supposing such a system were to be established?—The expense of making the map of a rural district would be on an average I should think a shilling an acre.

121. That would be about 125*l.*?—Yes.

122. And what would be the expense in a town district?—The expense would depend upon the closeness of the different properties. I conceive it would cost at least two shillings for each house, where the district consists solely of houses.

123. (*Mr. Wilson.*) That is for making a new map, is it not?—Yes.

124. I understood it would not cost as much to revise an old map as to make a new map?—It would not, except in very extreme cases. I ought to mention that on exchanges the Inclosure Commissioners occasionally receive complaints from parties who claim to be the owners of the property they are exchanging. When that is the case it is the duty of the Commissioners before proceeding with the exchange to obtain all the particulars of the grounds on which the claim rests, and to deal with it under the circumstances.

125. (*Mr. Lewis.*) Such as the case of a tenant for life having the power of binding the inheritance by an exchange under your Acts?—Any person either having, or assuming to have, an interest in the property.

126. (*Mr. Wilson.*) How long ago were most of the tithe maps made?—The Tithe Act passed eighteen years ago, and the Amendment Acts followed as they were required to meet particular cases; and these maps have been coming in ever since.

127. (*Mr. Walpole.*) How many parishes are there in round numbers in the kingdom?—15,000 parishes and divisions of parishes, which under the old Act of the 13th and 14th of Charles II. were authorised to maintain their own poor.

128. *Mr. Cookson.*) Parishes and townships?—Exactly.

129. (*Mr. Walpole.*)—Then the cost of making maps for each of these parishes, if they were all rural parishes, putting the cost of each parish at 125*l.*, would amount to nearly 2,000,000*l.*, 1,875,000*l.*?—The maps and references in the Tithe Office have cost 2,500,000*l.*

130. You must add at least half a million for the difference between rural and town districts?—For tithe purposes we have had but few town districts mapped.

131. I am talking of registration purposes; supposing you were to map all the properties distinctly?—It would cost a great deal more than 2,500,000*l.* The expense of making maps for Registration purposes in towns would be very large.

132. We should not be very far wrong if we were to estimate the cost of mapping England and Wales for the purpose of Registration of property at three millions of money?—It would cost more.

133. And even those maps would have to be altered periodically?—Surely, town maps and maps of manufacturing districts; I take it that the change of proprietorship in towns is much greater than in the country.

134. There would be a constant alteration going on in those maps when individual owners had intermingled their properties and sold one to the other, and those maps might be paid for by the individual owners when the property had been so sold and conveyed?—Yes.

135. Then in those cases the cost of revising the old map, using for that purpose the sub-map which would be evidence against the parties who have dealt with those divisions of property, would not be so much as making the map originally?—No.

136. You need not survey those again?—No.

137. And the cost of keeping up a good system of mapping for the purpose of Registration, even although you had maps made every 10 or 20 years would not be a considerable addition to the original expense incurred in making them?—Certainly not. I presume, in consequence of the determination of the Government to adopt a large map, that in the course of time the whole kingdom would fall into that system, and that you would have a re-survey of those districts that were first surveyed for the Ordnance purposes.

138. The fact is, that any survey that was going on for Ordnance purposes might combine the purpose of Registration without any additional expense?—And it would do so.

139. (*Mr. Wilson.*) And that I suppose would be the very best map that we could possibly have?—Yes.

140. I see that Colonel Dawson made the cost of revision very much less than the cost, of making a map?—Well, he is thoroughly competent to give a sound opinion upon it which I am not.

141. He makes the expense of making a map 9*d.* an acre, and the expense of revising a map 4*d.* an acre?—What was the date of Colonel Dawson's opinion?

142. It was about the year 1847 I think.—Then the value of surveying work has increased since that. I am quite sure I do not overstate the cost of making a new map, at one shilling an acre.

143. I was not mentioning it so much with reference to the actual work as to the difference between making and revising?—Probably Col. Dawson made the statement in explanation of some particular case. Would it not be better that we should send you a copy of the apportionment and a tracing from the map of some parish?

144. (*Mr. Walpole.*) Yes. Perhaps you could give us a copy of a completed map, and a completed apportionment, that we might add it as an Appendix to our Report?—I will do so.

145. (*Mr. Wilson.*) And an altered apportionment with a sub-map upon the altered apportionment?—Yes, you shall have it.

146. (*Mr. Walpole.*) Your opinion is that you could hardly proceed without having a new map?—I think the documents that we have are quite sufficient (when revised) for registration purposes.

147. Supposing you have a voluntary system of registration, and the party who wishes the conveyance to himself to be registered should desire to make use of any maps which you have got now, depositing them in the Registrar's Office, he could do so easily, I suppose, unless the property had been altered since the time when it was mapped for your purpose?—Yes; assuming you allow individuals to submit their property for registration.

148. And the individual, for that purpose, could have a copy of your map at a very trifling expense?—He might have a tracing at the rate of two or three shillings for one hundred acres.

149. Then he might deposit an extract from your map relating to parish A., containing perhaps, ten or a dozen numbers of different fields which belong to the person of whom he purchased, and leave it there for any other person to take advantage of it if he pleased?—Yes, the expense of doing that would be little to the individual.

150. What should you say it would be?—The particulars and the map would cost about five shillings the one hundred acres.

151. (*Mr. Cookson.*) If an individual were permitted to do that, he might put into the map property belonging to other persons?—Yes; as I explained, when isolated parishes were commuting their tithes, there were instances of parish A. taking a portion of parish B. to which it had no right.

152. In settling the apportionment of parish A. you did not call in the adjoining parish?—No; the Tithe Act ought to have contained a provision to that effect.

153. (*Mr. Walpole.*) Where would be the harm of A. colouring the property he bought, leaving all the rest uncoloured, so that the mere deposit of the map was not to affect any other owner?—The party doing that might lay claim to property that did not belong to him; and other landowners would not look over it, and you might be led into difficulty.

154. (*Mr. Cookson.*) It would only be another mode of describing the land he professed to be dealing with?—Yes.

155. (*Mr. Walpole.*) But in those cases where the property had been bought since the time when the map was made, and a map of that portion of the property had been put on the conveyance, would there be any objection to a purchaser from the party placing on the register the copy of the map coloured?—I should fancy, without investigating the matter, there would be great danger in allowing individuals to register otherwise than parochially, or by some district or other, the boundaries of which were well known and ascertained.

156. In short, you think there would be danger in any person being allowed to register unless the owners of all properties abutting on his own were either heard or admitted the map to be correct?—I think so.

157. Then that would exclude the possibility of any system of registration unless a compulsory one?—I think, from what I have seen in the Tithe Office, it would be very dangerous to allow individuals to register, and that all the neighbouring landowners ought to have notice.

158. Then, to a certain extent, any system of registration must be compulsory?—I fancy it must be compulsory in the end.

159. No, at the beginning; must it not be compulsory upon all the owners of property to this extent, that they must all acquiesce in a map of the parish being made, and contribute towards the expense of that map?—Where a map is necessary to be made.

160. Is not your evidence proceeding on the assumption that a map is necessary in all cases for the purpose of a system of registration?—Surely; but there are the tithe and other maps in existence.

161. (*Mr. Cookson.*) It is a common practice now in conveying property from a vendor

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to purchaser to describe the property in words, and also to refer to a map which is drawn on the conveyance?—Yes.

162. But that description affects no adjoining owner; it is not evidence against him?—No.

163. And suppose such a deed were registered, why should the deed with the map attached, from the circumstance of being registered, be injurious to any adjoining owner?—I am not prepared to answer that question, not having the advantage of being a legal man, but I should have thought it would have given the party registering his property, in setting out that map, if it was unobjected to for a series of years, a *primâ facie* title which he ought not to have had.

164. (*Mr. Lewis.*) That would depend on the effect which the law gave to the registration?—Yes.

165. (*Mr. Walpole.*) Have you found that small owners of property have objected to the expense necessary for the map for the commutation of tithes?—No, they have behaved exceedingly well. Sometimes they have objected, but we have had no great difficulty with them.

166. Do you not apprehend that there might be some objection by owners of property to a parochial map for the purpose of voluntary registration, if they did not wish to have their property registered?—Certainly, I think the small proprietors would not be aware of the advantages, and would look to the expense, which they would consider unnecessary. If the system could be commenced, and the value of property was found to increase largely, (and I think it would to a considerable extent by a system of registration,) then their objections, I suppose, would be withdrawn.

167. But the anticipated addition to the value of property would not operate on the great mass?—No, they would not believe the value would be increased.

168. There would be considerable difficulty in getting them to consent to the expense of new maps for the purpose of registration, however advantageous it might be, until they were satisfied of the advantage?—There would be so.

169. How did you charge the expense of mapping the parishes for tithes?—*Pro ratâ*, according to the rent-charge each individual had to pay; and sometimes, under particular circumstances, equally. There were cases where lands were covered by a *modus*, and where the *pro ratâ* amount on that payment would not be equitable.

170. How did you charge the expense in that case?—We charged so much for the map *per se*, and so much for the ministerial duty of imposing the *modus* on the land.

171. In registering titles to land, there would be no *modus* or special case of that kind, and therefore the only way of charging the property fairly would be *pro ratâ* all over the kingdom?—I think so.

172. Do you think that Colonel Dawson could add anything to your evidence material for us to know? We should not like to trouble him unnecessarily.—I have no doubt he can; of course, he is thoroughly conversant with maps.

173. Can you give us any idea of the probable period within which the Ordnance Maps would be completed for the whole kingdom?—The Ordnance Maps are completed for a large proportion of the kingdom; first, on the scale of one inch to the mile; and latterly, the two counties of Yorkshire and Lancashire, on the scale of six inches to the mile; and there are the four northern counties which will be soon completed on the new large scale. I am not sure, but I believe the portions not completed of the other two counties of Lancashire and Yorkshire will be finished as quickly as may be by spending a fair proportion of the 100,000*l.* a year upon them and upon Scotland.

174. Do you think it is in contemplation to make a new survey and map of those counties that have been mapped at one inch and six inches eventually?—I believe it is; but that will be at a distant period, probably.

175. It would take a long time to do that, I suppose?—Oh, a very long time.

The Witness withdrew.

Friday, 1st September 1854.

Mr. William Williams (*Solicitor*) called in, and examined.

176. (*Mr. Walpole.*) I think you were examined before the Select Committee of the House of Commons appointed to inquire into the subject of the Registration of Assurances?—I was.

177. And in the course of that examination you suggested or confirmed the suggestion of some other persons, as to a plan of registration of title or ownerships of property, rather than the registration of assurances?—Yes.

178. And in the course of the examination you also pointed out that a system of *caveats*, somewhat similar to the system of distringases which are put on stock, might, in the event of a registration of title being adopted, operate as a security for persons who had beneficial interests in the lands so registered?—Yes.

179. Do you still adhere to the evidence which you gave before the Select Committee of the House of Commons?—Yes.

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180. Now, adhering to that evidence, have the goodness to explain to the Commissioners in what way you think a complete protection might be given to all those interests which are not entered upon the register of the ownership of property?—I think that efficient protection would be obtained by lodging a distringas similar to the distringas which is now issued for the purpose of restraining the transfer of stock in the Bank of England, with the additional precaution which I understand has been suggested by some of the Commissioners, and which Mr. Cookson mentioned to me the other day, viz., that a distringas should be removable, not as is now generally done at the Bank, by giving notice of the intention of the party to transfer, and the distringas then being removed as a matter of course if no bill be filed at the expiration of eight days, but by requiring the assent of the person who lodged the distringas or the order of a court or judge. I think that would afford ample protection against all improper attempts to alienate the land.

181. In other words, if it was done by the order of the court or judge, it would be done by a decision adverse to a party before the court. If done in any other way it would be done with the consent of the party who claimed the interest?—Yes.

182. So that no interest could be injured if that plan were adopted?—I think not. We are not now providing for cases of forgery, or cases of which the criminal law takes notice.

183. Have you had extensive practice in relation to distringas on stock?—I have had to lodge distringases, and I have found a distringas lodged against a fund of which I have been a trustee. That was where a person who had a beneficial interest as a reversioner sold his interest to a public company, which always makes it a practice to lodge a distringas. It was a reversionary society, and they lodge a distringas immediately.

184. If a reversionary interest is sold to a public society, they, as a matter of course, lodge a distringas?—Yes.

185 Where a reversionary interest in stock is sold to an individual is it the practice to lodge a distringas?—I have not been much concerned for those who have bought reversions, but I believe it is the practice. In fact it is the natural mode of protecting the fund.

186. (*Mr. Cookson*). You would not think that a solicitor would discharge his duty unless he obtained a distringas in such a case?—No. If I were concerned for the purchaser of a reversion, I should lodge a distringas as a matter almost of course.

187. (*Mr. Walpole*). Have you ever heard in your professional practice of many or any frauds being committed with reference to the transfer of stock by a trustee, where a distringas had not been lodged?—I have not, in the course of my own practice. I have known of instances that have taken place. I have seen them in the ordinary channels of information, the public papers, when they have become the subject of judicial investigation.

188. But usually, with regard to a settlement of stock, the mere circumstance of respectable persons being named as trustees operates as a sufficient protection to all the persons interested in that stock?—Yes.

189. And the cases of frauds are comparatively very few?—Yes. I have had occasion to read the evidence of witnesses connected with the Bank of England, examined upon the South Sea Trust Company's scheme, and I observed that no instances have occurred of frauds where there have been three trustees. They have found instances of collusion between two trustees, but no case of collusion between three.

190. But practically there would be some difficulty in keeping up the number of three trustees?—Yes. I only mentioned that incidentally; not as connected with the inquiry.

191. (*Mr. Cookson.*) The necessity of keeping up the number of trustees would not exist if the parties beneficially interested were protected?—No; because the registrar in this case would become himself a *quasi* trustee. He has notice that a distringas is lodged, and he restrains the transfer, whether there be one, two, or three trustees. The number of trustees is unimportant.

192. If there is a distringas you are satisfied that the registrar would not allow a transfer to be made unless he had the order of the court or the consent of the parties, and that would get rid of all difficulty of notice not reaching the parties?—Yes.

193. (*Mr. Walpole.*) I believe you are a very great advocate for the simple registration of title?—Yes.

194. What class of interests would you allow to be put on the register as registered titles?—Answering generally, I should say everything which at the present moment is ordinarily the subject of sale as between vendor and purchaser. I mean every estate or interest in land which a purchaser buys with a view to specific enjoyment.

195. Then you would not put on the register merely the owner of the fee?—No, certainly not.

196. Would you have life estates on?—Life estates in possession. Anything that is purchased for possession or specific enjoyment.

197. Would you have life estates in remainder, as distinguished from life estates in possession?—That is not contemplated, because life estates in remainder are the subject of settlement; they are not the subject of sale. Leases for lives are rather the interests we contemplated, being actual interests which are now known to purchasers, and which are taken with a view to actual possession and enjoyment.

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198. Then you would put the fee, the life estate, the reversion, and the lease?—I was not aware that I was to be examined on this branch of the subject, or I would have brought my notes and papers, and been better prepared to specify the interests which we proposed to place on the registry of titles.

199. (*Mr. Wilson.*) Let us understand whether Mr. Williams refers to such a thing as a life estate under a settlement, or leases for lives?—No; leases for lives. In the evidence which I gave before the Select Committee I endeavoured to draw a distinction between property in land which is the subject of sale, and interests in that property which are the subject of settlement, intending that every species of property which is the subject of sale and purchase with a view to specific enjoyment should be on the register of titles, and that those interests in such property which are the subject of settlement, and not ordinarily the subject of sale, should be excluded from that register.

200. (*Mr. Walpole.*) But then one would like to know what you would include under that last definition?—That formed the subject of a good deal of consideration, upon which I was examined before the Select Committee, and I had better refer to the evidence I then gave.

201. With reference to the protection that is to be given to interests, it would be material to consider what class of interests are to be registered, as distinct from those to be protected?—It merely comes to this, that you would have to define of what interest a registered ownership should consist.

202. Can you see any objection to a registered ownership consisting of more than the absolute power of disposition of property, whatever that property might be? Might you not assimilate it more closely even to stock than you are attempting to do?—The difficulty I have aways felt is this, that stock is sold only for one interest, namely, the entire interest; land is sold, not only for the entire interest, but for a limited or qualified ownership, of which leases for lives or for years, rentcharges in fee, next presentations, &c., may be taken as examples; and it has always struck me that any attempt to introduce a complete analogy between stock and land must fail, because that complete analogy does not exist in the things attempted to be compared, and I think it would be impolitic to create a forced analogy between them by enacting that an estate in fee simple shall be the only estate that for the future shall be sold and conveyed by means of the proposed registration.

203. Do you not sell a reversionary interest in stock?—Yes, but it is not sold in the market as *stock*. Stock passes on the stock exchange as 100*l.* three per cents, or whatever other sum it may be, in *stock;* but you never so sell the reversion of stock. The Bank of England never takes notice of any qualified interest in stock. The title to land would be very simple if no one could sell his land for any estate less than the fee; but I am not prepared to say, on the part of landowners, that such a state of things would be desirable, and therefore an attempt was made, in introducing the proposed system of registration, to provide for the admitted differences between stock and land; stock being sold only as an entire thing; land being sold, not only for estates in fee, but for certain other specific interests, with a view to actual enjoyment by purchasers. I would mention more particularly leases, rentcharges, next presentations, and other limited interests, the purchasers of which expect to have the specific things they contract for, and which therefore I think should be the subject of registration as they are now of legal conveyance. Then, any mere equitable interest, such as an equitable mortgage or charge; which does not require the specific thing to be delivered to the person who becomes entitled to the charge, may be effectually protected, as it appears to me, by distringas; and I think that all settlements of land may be protected by vesting the fee simple of the land in trustees in the same way that stock is vested in trustees.

204. (*Mr. Cookson.*) Then, after it has been once registered absolutely in trustees, would you propose that any limited interest, such as a lease for lives or a lease for years, should be carved out of it, and registered?—Yes. It would be competent for the trustees to grant such leases, which would be registered in that division of the registry which it is proposed should refer to the leases to which the land is subject.

205. (*Mr. Lewis.*) Would you not propose to register any sale of the life estate under the settlement?—It did not form the subject of any particular consideration. Sales of life estates are unusual; mortgages of life estates are common enough; and there would be no difficulty in bringing either sales or mortgages of life estates within the operation of the scheme.

206. Sales of remainders in fee?—Sales of remainders in fee are as uncommon, but they would also be within the scope of the scheme. At the same time, these are only exceptional instances of *sale*, these particular estates being created usually by means of settlement.

207. But I thought you said just now you considered it to be part of the scheme, that whenever the interest sold would give the right to possession the sale of the interest should be the subject of registration?—I said, things that are ordinarily the subject of sale. I did not then mean to include life estates or remainders in fee, because I do not think those are ordinarily the subject of sale; they are, when once created, more the subject of charge and incumbrance than of sale, and the dealings with these interests are seldom with a view to specific enjoyment. A man, when he buys an estate with a view

to the enjoyment of it, buys an estate in fee simple. At the same time, as I said before, both life estates and remainders in fee, and transfers of these estates, would be capable of registration.

208. (*Mr. Walpole.*) I do not see how you distinguish between the right of possession, and the right that is ordinarily the subject of sale?—An attempt was made to distinguish it before the Select Committee. Mr. Bullar's papers, which were prepared at our instance, you will find appended to the Committee's report.

209. Is there any particular advantage in registering anything more than the absolute ownership? Supposing you alter the law to this extent, making all the others equitable interests, but giving the persons having life estates or estates in possession the same power as when they have legal estates, should you think there was any difficulty in registering those?—I think there would be considerable difficulty in introducing a change which should exclude from registration any interest in land which at the present moment is the subject of purchase with a view to specific enjoyment, as land or property in land.

210. Why should it not become equally the subject of sale and purchase afterwards?—Yes; but greatly changed in point of title. You must in that case make the registered owners trustees, not only for the owners of the fee in possession or reversion, but of every successive, limited, or qualified interest, whether in the nature of a lease or rentcharge, or an estate for life or in tail.

211. In other words, you must trust entirely to deeds, as you do now?—Not only so, but you must alter our notions altogether as to estates or interests in land.

212. You must alter them altogether?—I mean that if there is to be any efficient system that should provide for the wants of society, it must, I think, take cognizance of the fact, that estates in land with a view to specific enjoyment are the subject of sale for a less estate than an estate in fee simple in possession. What is the common case in dealing with estates in Lancashire? You sell the fee subject to a rentcharge in fee. There are two concurrent estates in fee simple; one in land, the other in the rentcharge.

213. Very inconvenient it is?—But you are not prepared to say that that system, which is found to be very convenient in Manchester and the west of England, is to be upset for the purpose of a theory? I should register the fee and the rentcharge, referring in the registry of the land to the registry of the rentcharge, which in many cases is more valuable than the land itself. I have many such conveyances at the present moment that I hold for clients of mine.

214. (*Mr. Cookson.*) It is the case in Bristol?—Yes; Bristol and Manchester. No one in Manchester will build on leases.

215. (*Mr. Walpole.*) In recommending a registration of ownership of property as registration of title, are you not thinking rather of a benefit to the purchaser than to the vendor?—I am thinking of benefiting the person who for the time being shall be the owner of land to be sold. I think that the present system of conveyancing is a great *incubus* on land; that is, the property in land. The object I should have in view would be, to simplify the mode of conveyance.

216. To render the present system of title unnecessary?—The present system of investigating title; investigating all charges and incumbrances.

217. That has relation entirely to the purchaser?—It operates for the benefit of the vendor.

218. But the way in which you are putting it has entirely relation to the purchaser?—Yes; the purchaser is the person you first legislate for, but you give the vendor a great advantage, because his land sells better.

219. Your object is to simplify and secure the title to the purchaser?—And at the same time to benefit the vendor, by diminishing expense, delay, and uncertainty in the completion of a sale.

220. By simplifying and securing the title to the purchaser you benefit the vendor? the purchaser may become a vendor afterwards?—Not only so, but the vendor himself gets a higher price for his land. I consider that the vendor always in effect pays the expenses of a sale, because the price he receives in exchange for his land is the actual cost to the purchaser, minus the expenses incurred by him. I believe that land would be worth considerably more if you diminished the cost of transferring it.

221. Suppose you simplify and secure the title to the purchaser, and leave all the other interests in land exactly where they are now, would you not confer a great boon on the landed interest of the country?—I have always thought so; but I use the term purchaser in a more extended sense than you do.

222. Then suppose you simply confine your registration to the registration of the whole disposable interest in the property, leaving all the other interests in property to be regulated and determined by arrangement among the parties themselves, will you not effect almost the whole of the objects which you have in view?—If you could induce parties to consent never to deal with their property except with what you call their whole disposable interest, that is, the estate in fee in possession, no doubt it would be a great advantage, considering the question merely with reference to the convenience and simplicity of the registered title to the fee; but inasmuch as they will not consent so to

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deal with their property, but will deal with it for estates and interests less than estates of fee simple in possession, you must provide for such dealings accordingly.

223. (*Mr. Cookson.*) Do you mean leases for lives?—Yes, and for years, and next presentations, and all other interests which are specific interests the actual enjoyment of which the purchaser bargains for.

224. (*Mr. Lewis.*) If you acknowledge these partial interests as well as the fee, can you ignore the sale of estates in remainder and life estates?—I cannot see that there would be any objection to include them.

225. You could not ignore them; you would find it difficult?—It would be difficult, and there would be no object in excluding them. The only object of excluding them would be to prevent the necessity of investigating title, or going into any limited or derivative interest.

226. If a definition of a registered ownership can be so framed as to include those interests without inconvenience, you would put them in?—Yes; there would be no motive for excluding them.

227. (*Mr. Walpole.*) The more you complete your register the greater number of interests you allow?—If you start with only the registry of land, with an index referring to the specific interests which might also be the subject of registered ownership, being less than estates in fee simple, you would only have the index of the land, the index of the other interests less than estates in fee simple to which reference might be made;—an index of land, and an index of owners of land. Suppose the registrar is requested to transfer land registered in the name of one John Smith, he finds upon the index that John Smith is the owner of it, and he finds a reference in the index to a lease which is also registered. It is not proposed that a lease for a less period than twenty-one years should be the subject of registry. He thus finds that land is subject to a lease, say for fifty years. I do not see that any great complication can arise from that circumstance. The result is that John Smith is in a condition to convey that land, subject to a lease for fifty years.

228. Would it not be more simple to confine the registration of ownership solely to the fee, and to leave all the other interests where they are at present?—The registry would be more simple, but I think not so effectual or desirable.

229. Would there be any advantage in so doing?—Yes; for this reason, that in many instances the value of a lease is more than the value of the fee simple to the lessee. Take a house in Grosvenor Square, subject to a ground rent to the Marquis of Westminster of 100*l.*, that lease having ninety years to run; the value of the leasehold interest is greater than the reversion in fee, whereas you would only register the reversion in fee; and the lease, which is the present and more valuable interest, must be protected simply by a distringas against the owner in fee.

230. It would be known by the possession of the property being in somebody else?—That may be; but the nature and extent of the interest would not appear; and the question is, whether we cannot devise a better scheme, and give to the owner of a lease the same advantage that you give to the owner of the fee; and I submit that you could do that, by having a second registry on which the ownership of the lease may be registered, and the dealings with the lease registered, not permitting anything to be registered less than the assignment of the lease, or an underlease for more than twenty-one years; all other interests in the lease being protected by distringas as in the case of the ownership in fee.

231. (*Mr. Cookson.*) You create during the existence of the lease a new property?—A property in fact more valuable than the reversion in fee.

232. (*Mr. Wilson.*) Why should not a man having a lease register it; it would not injure anybody else?—No; but it should not be necessary for him to register it for the purpose of protecting his interest. The possession itself should protect any man to the extent of his interest, being less than twenty-one years in possession. In fact, that being the common occupation lease, a purchaser should take notice from the circumstance of there being a tenant in possession that he has an interest that *may* endure for twenty-one years.

233. (*Mr. Cookson.*) Leases for twenty-one years are excepted by the Middlesex Registry?—Yes; at rackrent, and when possession accompanies the lease.

234. (*Mr. Walpole.*) Then there are two interests which you would put on the register; you would register the ownership in fee, and you would register leases for more than twenty-one years. Is there any other interest besides those two that you would register?—Rentcharges would be a third.

235. Then we will assume for a moment that the three ownerships which are to be put on the register are the fee, the rent-charge, and the lease for a period above twenty-one years?—Yes.

236. Now you are going to protect other interests in property, of which the fee may be in one person, a rentcharge may be in another, and a lease in a third, by claims to be sent in to the registrar?—Claims against any one of the owners of those specific interests.

237. Would not the claims in some cases have to be entered against two or more of those interests?—Not unless the claimant had a claim against the owners of such two or more interests? But I may not be following out your idea.

238. Then any person who carved an interest out of any one of those three would give o the person in whose favour that interest was carved a right of putting a claim on the register?—Yes; a right of putting what I term a distringas.

239. And each of those interests might be conveyed to any other person, subject only to those particular claims entered against each of them?—Yes.

240. And would you allow those interests to be parted with without the claim being satisfied, or would you allow the interest to be parted with subject to the consent of the claimant, or in what way would you allow a subsequent transfer to take place?—No transfer on the registry should take place of any one of those interests unless with the consent of all persons who had lodged distringases to restrain the transfer, or unless an order of the Court had been obtained to remove the distringas.

241. Suppose the claim of those persons who had lodged distringases was still intended to remain; it would simply be transferring the distringas to the new interest, in the same way as it had been entered against the old interest before?—Yes. The object we have in this subdivision is to recognize the existing subdivision of property in land.

242. (*Mr. Wilson.*) To make the existence of the lease part of the description of the fee?—It is a qualified fee; it is a reversion in fee, in point of fact; a reversion subject, during the existence of the lease, to that lease. That being so, what occurred to us was, that it was quite possible to give on the register an accurate description of the particular state of the fee, namely, that the fee was so qualified.

243. (*Mr. Walpole.*) Why would you not extend registration to a tenant for life?—The term lease was, for the purpose of our definition, so extended that it would have included it. I recollect that question was put to me by the Committee, and I said the lease would include an estate for life. The term lease was a lease for life or for years. After all, the old term of an estate for life was sometimes a lease for life.

244. (*Mr. Lewis.*) Yes, technically; but popularly it would not be understood so?—I mean that in classifying them under that threefold designation the term lease was taken as being the term which would more popularly indicate what was meant.

245. (*Mr. Walpole.*) What would you do with a mortgage in fee?—A mortgage in fee would be an estate in fee, and so registered, without appearing as a mortgage at all.

246. If a mortgage were made of property in fee, the mortgagee would be the registered owner in fee?—Yes; he would have the same rights as an absolute mortgagee has now over stock or railway shares. It is not an uncommon thing now for stock or shares to be mortgaged, and transferred into the mortgagees names.

247. And a mortgagee for a term would occupy the character of a leaseholder?—He would be registered as leaseholder having an absolute interest.

248. (*Mr. Lewis.*) Is your opinion opposed to extending the registry to dealings with interests less than the absolute interest?—Yes, except in the cases I have been referring to, for the purposes of a registration of "titles" to land. It occurred to me, however, that it would be necessary, for the purpose of effectually protecting the owners of those limited or qualified interests which it is not proposed to register under any head of titles to land, that a second registry should exist, but that with this second registry a purchaser should have no sort of concern; I mean a purchaser of any registered ownership. I use the term registered ownership as applicable to a fee, lease, or rentcharge.

249. The term absolute owner would do?—Yes.

250. Would you, or not, have a registry which would, as between a second and third mortgagee, embody or provide for the registry of the transfer of a second mortgage, or the transfer of a third mortgage?—Yes; the scheme that I should certainly propose would make such a provision, but not so as to affect the purchaser of the estate mortgaged.

251. Not so as to affect the purchaser of the registered fee?—No; but for the purpose of affecting the priority of the mortgagees as between themselves, that registry should be available.

252. And that would be the subject of a separate registry?—Yes.

253. What we may call, a subordinate registry?—Yes.

254. Then in fact your view of the registry is, that it would be useful to the extent to which it is capable of being made useful by registering all dealings with land, but that as to certain dealings there should be a separate registry?—That is for an entirely different purpose. For the purpose of dealing with land, on a sale or transfer you want only the first register.

255. The sale or transfer of the registered fee?—Yes; or rather registered ownership. For that purpose you want only the first register, comprising the land, the lease, or the rentcharge; but for the purpose of creating successive qualified or derivative interests, or selling or charging those interests, you would want a subordinate register, but which would be merely to regulate the rights of the parties as between themselves and their transferees, but not for the purpose of affecting the purchaser of any estate thereby charged or affected, unless the transfer of such estate was restrained by distringas.

256. So as to affect the rights of purchasers of the derivative interests?—Yes.

257. So that if I were taking a transfer of a second mortgage, I could ascertain the order of priority, and affect the order of priority by the register?—Yes; but I should not affect in any way the right of the purchaser of the land.

258. I only want to get at the question (which has engaged the attention of the

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Commissioners), whether you would have the registry so large as to embrace dealings with other than the registered ownership in fee. Your answer I understood to be yes; not so as to affect dealings with the registered ownership, but to effect the purpose of a register of equitable dealings *inter se*?—Yes; it occurred to me that inasmuch as a trusteeship of land may continue for a long period of years, trustees having to deal with the fee of a large settled estate might otherwise be placed in a position of considerable risk, relying, as they would do, (in the absence of a register of the interests or charges or incumbrances affecting the interests of their *cestuis que trust,*) on notice; and I have, in the course of my practice had occasion to see the danger of relying on notice of dealings with limited interests in stock, where a change of trustees takes place.

259. (*Mr. Walpole.*) Perhaps that is the reason why you prefer your present plan to the one which you suggested to the Committee of the House of Commons?—No; this is not a new plan. I believe there was some little difference on this point between myself and Mr. Field, who was also examined; but I said it did appear to me that it would be necessary to have this subordinate registry; and I refer the Commissioners to my answer to question 480 in the evidence annexed to the Committee's report; and I always took this view in my conversations with the Solicitor-General.

260. (*Mr. Lewis.*) You would concur in making the subject of a subordinate register all such matters as the sales of life estates, remainders or reversion, family arrangements, in which, as between father and son, interests change very frequently, second, third, and fourth mortgages, and the transfer of those mortgages respectively. You consider that a large proportion of dealings with land are of that nature, and therefore that it is very important to determine whether the register should extend to them or not —I think it is very important; otherwise you must rely greatly on the effect of notice to the trustees.

261. You otherwise withhold the benefits of a registry, whatever they be, from dealings of that nature with land?—Yes. You would insist that nothing, except a registered ownership, shall be the subject of registration. Then you will, as Mr. Lewis states, exclude from the registry a very large class of dealings with land; and it was on this consideration that it occurred to me it would be right that a subordinate registry should exist, to regulate the rights and priorities of persons interested in those dealings, and to enable trustees in whom the legal fee might be vested to perform their duty without risk.

262. (*Mr. Wilson.*) I understood you to say that the subordinate register would not be connected with the register of the ownership?—It would not affect the registered ownership, unless that registered ownership were connected with it by distringas. The only thing we propose to recognize for the purpose of affecting the registered ownership would be a distringas; that the registrar should not be bound to take notice of the subordinate register. In fact it might be an entirely distinct register, over which the registrar of sales and transfers of land should have no control.

263. (*Mr. Walpole.*) What has the purchaser to do with it?—He has no concern whatever with this subordinate register. Distringas is the only thing with which a purchaser has to concern himself. He finds the registered ownership, which he has contracted to buy, is restrained by distringas. All the purchaser has to do is to see that the distringas is removed; in other words, that the registrar transfers the registered ownership to him. It is the registrar's duty to see that he gets the consent of the proper person to remove it, that is, the person who lodged it, or the order of a competent court.

264. I thought you said that you would register second or third mortgages, for the purpose of ascertaining priorities?—I guarded myself, by stating that it was to be in a separate or subordinate registry, and not so as to affect the registered ownership.

265. I am aware; but for the purpose of ascertaining and keeping alive the different priorities of different incumbrancers you would have those securities in some shape or form entered on the register also?—On another register.

266. I suppose the second and third and fourth mortgages are to be still securities on the land?—Not *quoad* the purchaser.

267. Why not?—Because the purchaser would have obtained a transfer of the registered ownership of the fee.

268. Who would lend his money on the security of land, unless he could prevent the land on which he has lent his money from being sold without his knowledge?—If you get your distringas, the land cannot be transferred. There is a mechanical difficulty. If you have not your distringas you have not protected yourself.

269. Then the necessary consequence of that is, that every mortgagee, whether first, second, or third, will enter a distringas?—The first mortgagee will have the fee in himself.

270. Suppose a mortgagee of the term?—Then he will have the lease in himself, and is not entitled to restrain the transfer of the fee subject to the term.

271. The purchaser of the fee must have some notice of the securities on the land?—In the scheme I am suggesting there is the lease, the fee, and the rentcharge. You are taking the case of the man who purchases the fee; that is, the land. He goes to the register, and finds that that land is subject to a lease for 1,000 years, which is vested in John Nokes. He knows that he buys subject to that legal term vested in John Nokes.

272. Give me leave to ask you, in the first instance, how, according to your scheme, he is to ascertain that the land is subject to the term of 1,000 years?—Because in the

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registry, by the scheme on which I was examined, there would be a reference to each of those three heads of registry, from the land to the lease, from the land to the rentcharge, so that by searching the index you would find that the land was subject to the lease or to the rentcharge, if there was any issuing out of it. You would also find the transfer of the land is restrained by distringas. In the case you were putting, that was the purchase of the land alone; that is, as it would appear from the registry, the purchase of the reversion subject to the lease of 1,000 years. If a man chooses to buy the reversion subject to a lease of 1,000 years I do not see why I am bound to protect him, beyond giving him notice of the fact. It would be the same as it is at the present moment. A man, upon investigating a title, finds that the vendor has the power to convey to him in fee, subject to a term of 1,000 years vested in John Nokes, for securing 5,000*l.* He takes the reversion in fee with the consequent equity of redemption, leaving John Nokes's interest outstanding.

273. Then there is the second mortgage?—The second mortgage would, by the scheme I am suggesting, have that protection which a second mortgage does not now possess A second mortgage is now liable to be squeezed out entirely.

274. How does a second mortgage appear on the register?—Not on the register of titles; but he may enter a distringas to restrain the sale by the first mortgagee (assuming, of course, that the first mortgagee has no power conferred by his mortgage to sell the estate); and the mortgage would also appear on the subordinate register.

275. Then the purchaser purchases the property thinking that he purchases it subject only to a term of 1,000 years for securing 5 000*l.* How does he know whether the property is subject to another term for securing 5,000*l.* more?—Because there is none other on the register. There is nothing on the register, except the term of 1,000 years vested in John Nokes.

276. Where will all these registered subordinate interests appear? As I understand you, they would appear in a separate part of the register.—The registry to which Mr. Lewis's examination of me tended was an entirely distinct registry; not a registry for the purpose of sale or transfer of land.

277. (*Mr. Lewis.*) Sale or transfer of the fee?—Not as between vendor and purchaser at all; but the registry to which Mr. Lewis's questions were pointed was a registry of charges or incumbrances on the land, not intended to affect by this scheme the land itself.

278. (*Mr. Walpole.*) I do not quite follow you; how can there be an incumbrance on the land which does not affect the land itself?—The "registered ownership" is a better term.

279. (*Mr. Lewis.*) The registered fee?—Yes; or other specific interest which you admit on the registry of title.

280. (*Mr. Walpole.*) Then, unless there is a distringas, you are quite clear of all?—Yes. Mr. Lewis was examining me as to the protection of a class of interests that are not the subject of registry at all, for the purpose of transfer or sale.

281. But are so for the sale or transfer of the interest?—Yes; on a separate registry altogether. Suppose you have a mortgage of stock, without a transfer of it into your name; the Bank of England takes no notice of a mortgage of stock. You may give notices by the dozen, but the Bank of England takes no notice of them, if the transfer of a stock is not restrained by distringas. The stock is transferred to me as a purchaser without notice, and your mortgage is worthless as against me. So I propose it should be here; but, instead of resting, as in the purchase of a reversion of stock, or the mortgage of stock, on the accuracy or honesty of trustees in whose names that stock might be standing, I have proposed that there should be a distinct registry, for the purpose of regulating the priorities of the parties having such interests among themselves; but, unless they also protected their interests by lodging a distringas, they should not prevent a purchaser of the land getting the land itself, discharged from all these incumbrances; I believe it is the essence of the scheme, that nothing but a distringas is to interfere with the transfer of land; otherwise you involve the purchaser in an investigation which it is the great object of the scheme to dispense with altogether, so that when the land is once transferred it is transferred absolutely.

282. (*Mr. Lewis.*) Your view is, that each person taking an incumbrance, of whatever sort, should be enabled to protect it by distringas as against the registered fee?—Clearly, it is his own fault if he does not; it is open to him to take the same course as a man now having an interest in stock, who makes an affidavit that he has that interest, and lodges a distringas to prevent the transfer of the stock without notice to him. Whether it would not be right that no distringas should be issued except in respect of an interest created by writing under the hand of the party whose ownership is to be charged, or by order of a court, may be a question deserving consideration.

283. (*Mr. Wilson.*) When you say every interest, you mean only the interest of a mortgagee of the fee; you do not mean that a person having a reversionary interest under a settlement should have liberty to put on a distringas?—Yes; unless the settlement contains a power that overrides the interest. All those are matters to be regulated by the rights of the parties themselves.

284. Who is to decide whether a person has a right or not?—That must be decided by reference to the contents of the settlement.

285. Who is to read the settlement?—You must in the first instance determine by what means the distringas is to be lodged. You are to consider whether it would be right

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to let parties lodge a distringas generally, on affidavit that they possess an interest, without going on to specify the nature of their interest.

286. How do you propose to do it?—My impression is, it would be right that the interest should be an interest recognised by the parties in whose names the land is registered; that it should be admitted by the registered owner, or recognized by the order of a court or judge.

287. That no person should be allowed to put on a distringas without the consent of the registered owner or an order of the court?—Yes. Take the case of a man having a reversion in fee or remainder in tail in a settled estate subject to a settlement, which contains the usual power of sale to be exercised by the trustees of that settlement with the consent of the tenant for life. I say, in that case, clearly, the reversioner or the remainderman in tail is not entitled to restrain the sale, and therefore not entitled to a distringas. The trustees, with the consent of the tenant for life, in the case I am now putting, have the absolute dominion,—the *jus disponendi*—of the estate, by the present law, and if the trustees were the persons on the registry they should have it in the altered state of the law.

288. (*Mr. Walpole.*) In short, you would allow nobody to have the power of putting a distringas on the register, except those who could prevent the sale of an estate, or whose consent is necessary for the sale of an estate?—Yes; we do not propose to alter the rights of property at all.

289. You would only let the distringas be put on with the consent of the registered owner, or taken off with the consent of the registered owner, or by an order of the court?—Put on with the consent of the registered owner, or by an order of court, or taken off by the party who lodged it, or by an order of court.

290. You would not permit a sale of property unless by the consent of the claimant or an order of the court?—No.

[The witness withdrew.]

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Mr. William Williams (*Solicitor*), called in, and further examined.

291. (*Mr. Lewis.*) I wish to ask your opinion about the necessity for a public map for the description of the property. Assuming that we can keep upon the face of the register the identity of the property with reference to which the successive entries are made, how can we avoid errors in the first entry, if we do not have a public map to which we can refer?—By requiring from the party registering a particular verbal description of the property which is to be registered, aided by a map, so far as the property is capable of being described by a map.

292. Then suppose the error to be, in too much being inserted in that map, or that description prejudicial to somebody else who may be the owner?—It does not affect the title. As I understand, it is not proposed to give title.

293. No parliamentary title?—No, and nothing could happen that might not happen now in the registries of Yorkshire or Middlesex.

294. Except that you will have a public registry with a series of entries relating to particular property, part of which may afterwards come to be the subject of another series of entries in the registry?—That might be so. In the present system of conveyancing the same mistake might occur. You might continue to describe land not belonging to the estate; and I have found such instances, in which a portion of an estate has been sold but the description has continued the same, and the parties have gone on describing the entire estate, although forty or fifty years ago four or five fields have been sold to the adjoining proprietor.

295. But, under the new system, you would have a public memorial to which you could refer buyers, and which it is supposed would afford them security; they would be referred to a series of entries in this memorial by which the title of the proposed vendor is supposed to be shown, but not to another series of entries in which that title might as to part be impeached. Do you see any mode of avoiding such an inconvenience as that?—I do not think the question arises, or at least not so as to present any considerable difficulty, for this reason, that the question of identity is not proposed to be determined by registration, and that question would remain one on which a purchaser would have to satisfy himself by evidence, independently of or in addition to the register. It does not appear to me that the difficulty in doing this would be greater than it is now, particularly with reference to Yorkshire and Middlesex titles. You may there have a series of descriptions applicable not only to the estate which is sold to the purchaser, but to another property that does not belong to the vendor but which has been by mistake for a series of years included in the description of his estate. The mistake, however, is discovered by a comparison between the description of the estate which the purchaser has contracted to buy, and of which the vendor is in actual possession, and the description appearing in the title deeds and on the register. The other property would be in the possession of the actual owner of it.

296. It is a registration of title to something?—Yes, apparently so.

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297. And apart from the reference to that something, it would be the registration of a mere fiction?—Yes; so it is now. It is not proposed that registration should have a greater effect than a conveyance at the present moment; that is to say, it is proposed that you should convey by means of registration.

298. Is not this the principle of the plan—that as from the time of the commencement of the registry, there need be no other investigation into the title of the thing bought than that which the registry furnishes?—Yes; title, as distinct from the identity of the property to which the title relates. This is to be enquired into and ascertained for the purchaser's satisfaction by evidence *dehors* the registry.

299. There would be a concatenation of title through individuals, from A through B, C, and D to E?—Yes; but I have supposed that, except as to the title prior to the commencement of the registered title, there would be no investigation of title at all; or that if there be any such investigation, it would be confined to the examination of the series of successive absolute transfers of which the title would consist, and no question of *title* would arise. The only question would be the identity of the land.

300. There would be no retrospective investigation after the commencement of the registry, with reference to the title subsequent to such commencement?—No.

301. You agree with Mr. Cookson that the title anterior to the commencement of the registry is to remain as it is, subject to the effect which lapse of time will have?—Yes.

302. It is to be a certain record which you look at?—Yes.

303. Then I may present the difficulty in this way. A registry of one supposed piece of land commences at an earlier date than the registry of another supposed piece of land. To the former piece a title is shown which has gone through two or three changes, each of which appears, or, having regard to the erased entries, might appear on the registry; the title to the other piece appearing in a similar manner in a separate series of entries, but beginning at a later date; then is not this circumstance possible, that the supposed second piece might embrace within it part of the land which is supposed to be the subject of the first series of entries, exclusive of all others in the registry, and is it not thus possible that there might be a double and inconsistent title registered as to the same land, supposing the registry not to be coupled with a public map?—Yes; but inasmuch as no claim to register is to be made except on an actual conveyance or transfer, it is not probable that such a mistake would occur, because it is not probable that a particular description of land bought, accompanied by a map as proposed, would contain any such error.

304. Not probable, but it is possible?—Yes; but it is not possible for you to devise a scheme that would be free from every objection, and it is equally possible under the present system of conveyancing.

305. Suppose a Bill were passed, the enactment would run in some such form as this—that the title to piece No. 1 should be valid when registered according to the rules laid down, subject only to any caveats entered under the series of entries as to piece No. 1; and then the question is whether there would be any means, by which the proposed purchaser of piece No. 1 could be protected against the series of entries No 2, conferring a *primâ facie* title, unimpeachable to part of the very same subject?—If it be enacted that registration does not confer title any more than conveyance at the present moment confers title, I do not see that any difficulty will exist that does not now exist, and which will always continue to exist with reference to dealings with land, unless you make the transfer equivalent to a judicial act. You must always have to ascertain the identity of the thing dealt with. It resolves itself into a question. What is the subject matter of the conveyance, registered or unregistered?

306. (*Mr Walpole.*) Might not your answer lead to an error? Do you not mean that the registration is not to confer the specific thing which was purported to be conveyed; but that it does confer a complete title as to that which the party had the power to convey?—Yes, that is what I mean.

307. (*Mr Lewis.*) You do mean that it excludes all other title?—Not necessarily. It confers title in the same way that a conveyance now confers title; that is to say, it conveys all that the party has the power to dispose of in the property described in the conveyance.

308. (*Mr. Walpole.*) No dispute can arise as to title, but only as to the identity of the thing?—Exactly.

309. (*Mr. Cookson.*) You would give the same effect to a deed registered, that is now given to a deed not registered?—Yes; or all the effect that is given to a deed registered in Yorkshire. There is nothing to prevent me from registering a conveyance of an estate in Yorkshire that does not belong to me.

310. (*Mr Lewis*). Would not the effects of the contemplated register be very different from those of the existing registers in Yorkshire?—Not for the purpose of conferring title.

311. By means of notice, and even for the purpose of conveying a legal estate, a conveyance of an estate in Yorkshire, although unregistered, may sometimes be effectual?—What I mean is this: If I choose at the present moment to register a deed purporting to be a conveyance of an estate in Yorkshire that does not belong to me, such a deed does not convey that estate in Yorkshire, but there is nothing to prevent me registering it.

312. There must be a legal title, as well as the registry, in order to have a secure title in Yorkshire?—The result would be very much the same under the proposed system of registration.

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313. Allow me to refer to this difference. All the entries on the Yorkshire registry are under given names, and the search under those names would disclose the fact of there being conflicting claims under different deeds, relating to the same land; whereas here, the proposal is to have particular titles individualised and separated, so that the search would be confined to the particular title under which the buyer is to take?—But it does not alter the registration itself.

314. Would the buyer have the means of discovering that there was no such conflict of title or claim as I have above supposed to be possible under separate sets of entries?—The purchaser would not, perhaps, have the same opportunity of discovering that there had been an actual conveyance of part of the estate at an antecedent period, but if maps be annexed to every conveyance, and the registrar does his duty in entering on the register of such title every conveyance of any part of the property to which the title relates, I really do not think the difficulty you are suggesting is one of any practical moment. Besides, in the event of there having been a prior conveyance of part of the estate, the possession of this part would be in the person to whom it has been so conveyed, and not in the vendor, so that the supposed purchaser would not have contracted to buy it.

315. You think the scheme might not be perfectly complete without having a public map to begin with?—I think it would be more complete by a public map, but I do not think a public map is essential to the scheme. I think a proper map attached to the conveyance or transfer to be registered will answer every purpose.

316. (*Mr. Walpole.*) With reference to the map—supposing you were told that it appeared upon the evidence of well informed persons that it would cost three millions of money to make such a public map of the property of this kingdom as would be complete for the purposes of registration, and that even the identity of property of particular persons, as far as regards the boundaries, would not be determined without further litigation—would you or would you not think that a map made under such circumstances would be of such importance for the full effect of your scheme, that you would recommend the incurring of that great expense?—Certainly not.

317. That expense would have to fall either on the land or the country, and in neither case would you think it would be of sufficient value to justify incurring such expense?—Certainly not.

318. (*Mr. Lewis.*) I should like to draw your attention to the effect, beneficial or otherwise, which the proposed scheme of registration of title would have on mortgage and loan transactions. One objection which has presented itself to some of the Commissioners is this, (and you as a solicitor for great landed proprietors will appreciate the objection if it is really a good one,) namely, that by changing the name of the registered owner upon the occasion of a mortgage, and inserting the name of the mortgagee, you will make a great landed proprietor who has borrowed money on his land, though much less than the value of the land, appear to cease to be the proprietor by a public entry?—It is not proposed that the registry should be accessible to the public.

319. Then you may strike the word *public* out of my question?—Searches of the registry should never be permitted, except at the request of the registered owner or some one assuming to act as his solicitor.

320. Setting that aside, does it occur to you that the feelings of great landed proprietors would make them averse to a plan which, in consequence of their having borrowed money for temporary purposes, might occasion in form a change of ownership, so that there would appear to be an absolute transfer to one who in fact would be only a lender?—I do not think so, for at the present moment the actual conveyance does take place whenever a man borrows money, whether for temporary purposes or not; if the amount borrowed be sufficient to justify a mortgage, it is a mortgage in fee.

321. (*Mr. Walpole.*) Would there be any necessity for a transfer in the registry at all?—Not if the parties agree. There might be a distringas.

322. They might agree it should remain in the same name for the purpose of disposition, the contract for the loan remaining outside the registry?—Yes, so as to create an equitable mortgage.

323. (*Mr. Lewis*) Still, must not the mortgage in fee be placed on the register, as a fact?—That, as I said before, must in all cases be the subject of contract between borrower and lender.

324. Do you think that the lender would be content with less than the legal control over the estate?—That depends on the character of the party. If it be a permanent loan of a large sum of money, I should say not. If for temporary purposes, I know that bankers and others do advance money on securities that we should perhaps consider legally insufficient, simply the deposit of title deeds accompanied by a bond, without previous investigation of title.

325. (*Mr. Walpole.*) The money is lent on personal confidence, and not upon the actual security of the legal ownership of property?—Yes.

326. Supposing your registration scheme was carried into effect, would there be the same means of borrowing money on the equitable deposit of deeds, or what is equivalent to any equitable deposit of deeds, under your scheme, as there is now?—Yes. I was examined at some length on that subject by Mr. Spooner, who was greatly interested in that question as a local banker. You will find the result of my examination in the minutes of evidence before the select committee, and I thought Mr. Spooner seemed satisfied.

327. Have you satisfied yourself that a banker would be as willing to lend money on a deposit of deeds, or what is equivalent to a deposit of deeds, under your scheme, as he is now?—If he acted on my advice, I should think he would be better satisfied.

328. Would he not be likely to act under your advice and under the advice of solicitors like you?—I think if he could get a distringas on the transfer, accompanied, as it still would be, by the deposit of the certificate of ownership, he would be better off than by getting a simple deposit of deeds that does not restrain the conveyance.

329. (*Mr. Lewis.*) In the examination of Mr. Cookson before the select committee of the House of Commons, there was the question and answer, "Supposing there was a legal mortgage, would that be entered on the register?—Yes, as an absolute transfer." Now surely, as a solicitor, you would consider that you would not discharge your duty in taking a mortgage for a client by getting anything less than the transfer of the legal estate?—But if my client chooses to lend his money on a contract that is to prevent him having such a legal transfer, I do not know how I can say he shall not so lend it. A banker is is in the constant habit of so lending money.

330. I am aware that is the case in city transactions?—I do not think the practice is confined to the city. I could name instances, which I could not of course mention without a breach of professional confidence.

331. In the case ordinarily of a formal mortgage, (I am not alluding to an equitable deposit,) is it made otherwise than by a transfer of the estate?—Certainly not. If it is a mortgage that is intended as a permanent investment it would be in due form.

332. (*Mr. Walpole.*) Then in that case the ownership of the property would be represented on the registry as being in the mortgagee, or trustee for the mortgagees, instead of being in the old owner?—Yes, as at the present moment, on the investigation of the title, the legal fee would appear to be vested in the mortgagee or his trustee.

333. (*Mr. Lewis.*) Do you think that landed proprietors, who would be the parties to pass such a measure as this, would consent to mortgages being so entered upon the registry as to constitute in appearance an absolute transfer, so that they would cease to appear the actual owners of the land?—I think so. The nature of the transaction would not appear on the registry, whether it were a mortgage, a settlement, or any other transaction. The fact would simply appear that the estate had been conveyed from A to B; whether it was upon a settlement or a mortgage would not be disclosed. Then if the register be not accessible to the public, I do not understand why a land owner should object.

334. I only asked you if you thought it would be objected to?—I have spoken on the subject to one or two land owners, who have been greatly interested in the question, particularly in consequence of the enormous expense, and what is worse, the delay and uncertainty attending the sale of land, and they have not felt any difficulty at all on the subject.

335. Then, the second question which I wish to ask you upon this part of the subject is, whether it occurs to you that it is an objection to allowing caveats to be entered to protect second, third, and fourth mortgagees, that thereby you would be embarrassing the first mortgagee in a way in which he is not embarrassed now, by puisne mortgages being made?—I should not permit a caveat to be entered to prevent a sale by a first mortgagee, if the first mortgage contained a power of sale. Are we to assume that the first mortgage contained a power of sale?

336. That will involve the point. When, and by whom is the question to be determined as to the right of a second and third mortgagee to have his incumbrance protected by a caveat?—That question was put, I think, in my previous examination. The first question we have to determine is, by what authority is the caveat to be entered, and what is to be the effect of the caveat; and it appeared to me it was right that the caveat or distringas should not be entered, except by the consent of the person who appears in the register to be the registered owner, or by an order of the court. So that in the case you are supposing, the first mortgagee being on the register as the registered owner, would have to consent to the caveat being entered, or an order of the court must be obtained to restrain him from selling without notice to the second mortgagee.

337. Then surely there is a serious consequence upon that, that the borrower is to negotiate with his first lender before he can answer his necessities by obtaining a second loan, or he is to have a judicial investigation of the question, whether he has a right to have that second loan secured by caveat, so as to give the lender a security on the land?—I do not prevent him from borrowing, but if he has given to his first mortgagee a title to his land, he is not entitled to borrow money from a second mortgagee in such way as will prevent the first mortgagee having the full benefit of his security.

338. The question is, whether the second mortgagee would not be left without security upon the land, unless his borrower can get the consent of the former lender or the order of the Court?—It is not proposed that the rights of property should be interfered with, or that the second mortgagee should have, by means of registration, a better right or title than he now has.

339. When a second mortgagee now takes a security on property, it binds the equity of redemption, without mentioning the subject to the first mortgagee or obtaining an order of the Court?—So he might still have a claim on the property to be asserted in equity.

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340. Would it be an equity inherent in the property attaching to the equity of redemption?—Nothing except what is on the registry would bind the property; he might have a right in equity to redeem. That is all he has now.

341. Would it be more than a personal right without a caveat?—No; but it would be competent for the court to order a caveat to be entered, if the second mortgagee were entitled to it; and if, as is usual, the power of sale by the first mortgagee were, as between him and the mortgagor, not to be exercised without notice to him or his sequels in right, the second mortgagee, standing in the place of the mortgagor, would be entitled to this notice; and the first mortgagee would consent to the caveat being entered, or on his refusal the Court would make the order.

342. (*Mr. Walpole.*) Would it not simply amount to this, that a borrower in that case would have to get the consent of the first lender that the second lender should have a claim *in rem* to the land charged, subject to a power of sale in the first lender?—Yes; or to make proper stipulations on the occasion of the first loan.

343. In that case the first lender could never successfully refuse, because to do so would be so unreasonable that the Court would enforce it?—After a register was established, all these things might be the subject of contract; and as to the case which Mr. Lewis supposed, of first and second mortgagees, it would be a matter of contract by the mortgagor with his first mortgagee upon what terms he should be entitled to borrow on a second mortgage.

344. (*Mr. Lewis.*) Are not first mortgagees generally jealous of transactions which affect the equity of redemption. Do not their solicitors invariable decline to affect them by any dealings between them and second or third mortgagees?—No doubt.

345. (*Mr. Walpole.*) They will not diminish the security of the first mortgagee?—No.

346. Will the claim put on the registry, as you suppose, diminish the claim of the first mortgagee?—No, for after all, it would be nothing more than a right to restrain the sale without notice, which at present a mortgagee is almost invariably bound to give.

347. (*Mr. Lewis.*) Ordinarily does the solicitor of a first mortgagee allow notice of a second mortgage to be endorsed on his deed?—No, unless his mortgagor has made it a matter of stipulation, which is very uncommon.

348. Suppose it were proposed to be made matter of stipulation?—Then I should object to it certainly.

349. The object of a person who lends money subject to a prior mortgage being to obtain a security on the land, and not the mere personal security of the man who wants money, and that object being under the proposed plan accomplished only by a caveat against the registered ownership, the consequence seems to me to be this (and I wish to know whether you agree to it): either, that the caveat being entered, the first mortgagee is embarrassed with the necessity of getting that removed before he sells under his power, or the borrower is under the necessity of getting the consent of the first lender to the caveat being entered, or obtaining an order of the Court for that purpose?—I do not quite follow the difficulty, because, if the caveat were entered, the first mortgagee's power of sale would not be restrained beyond the period required by the contract between him and the mortgagor, after the expiration of which, the second mortgagee must remove his caveat or the Court will at once order its removal.

350. I want to keep that distinct about the power of sale. I want to have determined the right of a second incumbrancer to come on the register, when the first has a power of sale. You are aware that a second mortgagee takes security on the property though the first has a power of sale, and when the first is paid off or redeemed, the second comes in without more being done?—Certainly.

351. The object of the lenders will be still the same, to have an effectual security for their money on the thing charged?—Yes.

352. And a second or third lender would never be content, any more than he is now, with the mere personal covenant of his borrower?—He gets little more now, and my practice has been not to lend on second mortgages. I do not think that any system of registration or any system of conveyancing can be devised which shall have the effect of giving effectual and complete security to a second mortgagee.

353. I agree, not effectual and complete; but is it desirable that the scheme should diminish the opportunities of landowners to borrow money, although they have borrowed before?—I do not think the scheme will do so, on the contrary I think it will increase them.

354. I have presented to you the alternatives, and the question is, whether one or other of those alternatives, rightly or wrongly, would not be the result?—The first mortgagee either has or has not the power of sale.

355. Which is not to be prejudiced in any case?—No. If he has a power of sale, the second mortgagee will have no right to restrain the sale, unless the mortgagee is infringing the terms of the power.

356. Then, if the first mortgagee has a power of sale, there could be no right in a second or third incumbrancer to enter a caveat?—He may by consent, enter a caveat, for the purpose of receiving *notice* of the first mortgagee's intention to sell, but the court would order its removal if the sale were in accordance with the terms of the power.

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357. Then seeing that the practice is for the mortgagee always to take a power of sale, would not the effect of such a scheme be to render landed property less valuable to its owners, so far as these owners want to raise money by second or third mortgages?—I do not think it would. I do not think that anybody lends money on a second or third mortgage, except on personal trust and confidence, that personal trust and confidence being to a considerable extent in the character of a borrower, and upon the result of inquiries which are made as to the extent of the first mortgagee's claim.

358. Which the first mortgagee is not bound to answer?—That is the state of things under the present system. Second mortgagees, I think at the present moment, are always placed in a disagreeable position. I would not lend money on a second mortgage.

359. Trustees, you know, are not at liberty to do it?—And they are not frequently made.

360. I think your experience will concur with mine that they are made?—If they are made, I think you will agree with me that they are made on personal trust and confidence.

361. That depends on the amount of the first mortgage, of course?—Not altogether; I mean personal trust and confidence in the result of the inquiries which are made from the mortgagor, to ascertain that there are no mortgages except the first mortgage. The loan proceeds upon trust and confidence in the borrower, that he has not encumbered the estate to any greater extent than appears by the first mortgage.

362. I thought you meant personal trust and confidence as to repayment, as bearing on the question of the necessity of securing second mortgages by caveats?—I mean this, that inasmuch as your security would be diminished by the extent to which the borrower has obtained money beyond his means of repayment out of the security offered.

363. One is character and the other means. Character may be good enough for an assurance of the state of the title, but not good enough as security for repayment?—But the security depends on the truth of the representation as to the extent to which it has been already incumbered.

364. You may be quite content to accept a man's statement, but that would not secure you your money when you want it repaid?—But I lend my money on the truth, or the supposed truth of the representation that he has not encumbered the property beyond that which appears on the first mortgage.

365. (*Mr. Cookson.*) In any case within your experience, where a second security has been taken, has any notice been given to the first mortgagee?—Yes.

366. What is the effect of that?—I do not consider that the effect of that is in any great degree to increase the value of the security. I mean it does not affect the priority.

367. (*Mr. Lewis.*) It prevents him lending more money to the borrower?—Yes; but suppose the borrower had borrowed money from another person who had not given notice to the first mortgagee, that other person would not be excluded, the priority of the parties not being regulated by notice.

368. (*Mr. Cookson.*) Suppose a mortgage with a power of sale under the present practice, then a second mortgage and notice to the first mortgagee, and a sale subsequently by the first mortgagee; when the first mortgagee has been paid his principal, interest, and costs, would the second mortgagee be entitled to lay hold of the residue of the fund raised by the sale?—Certainly.

369. That practically is the way in which a second mortgagee is paid?—Yes; frequently.

370. (*Mr. Lewis.*) Now, we will go to the case of the first mortgagee having power of sale. We agree that is not to be prejudiced but is to be exercisable as it is now?—Yes.

371. When is the question to be determined as to the existence of the power being a ground for erasing the caveat which protects the second mortgagee?—I do not understand that there to is be any such thing as a caveat against a sale—I mean in the sense of restraining a sale which is according to the terms of the mortgage. You are supposing it to be made in contravention of these terms.

372. Are you not prejudicing the plan by saying it is a caveat against the sale? It is a caveat to step in when the first mortgagee is out of the case. The first mortgagee may not care to sell his property and may be paid without sale?—I do not so understand it. If I am to be the absolute owner, as a mortgagee I cannot permit a caveat to be entered so as to prevent me from selling, though I may be willing to consent to a caveat against selling without notice to the person entering the caveat.

373. Your object and mine is the same, that the power should be left unimpeachable; but might it not be managed in this way: we will suppose the first mortgagee either protected by a caveat or registered as owner, and the second mortgagee protected by a caveat. The first mortgagee wants to sell. Might he not go to the registrar and say, "Here is my power of sale; I ought not to be prevented any longer from disposing of the property and the second mortgagee's caveat ought to be removed;" would not that be the time for procuring the second mortgagee's caveat to be displaced? Is it indispensable to the plan that this should not be the way of working it out as regards mortgages?—My impression is, it would be better that the first mortgagee should not be hampered by caveats if he is entitled to sell without notice. Whether he is or not so entitled is a matter of contract to be determined between him and the mortgagor at the time the money is lent; and generally notice is required, so that the difficulty would not arise.

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374. I must seriously press you with this then, whether the consequence would not be generally and substantially to put an end to such transactions as second and third mortgages?—I think not. Second and third mortgages are hazardous investments at the present moment, and the proposed scheme would not render them more hazardous, but rather less so.

375. (*Mr. Walpole.*) Might not the effect of it be, in all cases of a first mortgage, to involve the necessity of altering the trustees of what we call the legal estate, that is, the registered owner, so that the registered owner in future should be trustee *simpliciter* for the first mortgagee?—Yes, that might be so.

376. Then there could be no claim against the estate by a second mortgagee, and the second mortgagee could have nothing more than an equitable contract to be turned into a legal contract, or a legal ownership when the first mortgage was satisfied?—It is an equitable mortgage now, a mortgage of the equity of redemption to be enforced in equity.

377. That is another mode in which it might be worked out. I am now supposing the protection to be fully given to the first mortgagee by a power of sale. Would it not be best worked out by altering the registered ownership, and putting the registered ownership of the property into the names of trustees for the mortgagee?—Either in the name of the mortgagee himself, or trustees, or some one for him.

378. I mean by that, that the first mortgagee would no longer be in the column representing the claim, but in the column representing the registered owner?—That I contemplated all along, that the mortgagee would appear to be on the registry the absolute owner.

379. In a great many cases he would?—Not in all.

380. (*Mr. Lewis.*) You think, in the case of banker's securities, that they would take them as they do now?—A person would take his security as he does now without taking the conveyance of the legal estate, and, under the altered system, without taking a transfer of the registered ownership.

381. (*Mr. Walpole.*) In that case, a second mortgagee would not have a claim entered at all, unless the registered owner consented; therefore it would be part of the contract?—Yes, or by an order of court.

382. (*Mr. Lewis.*) What I hoped you would do was, to reconcile the existence of a power of sale in the first mortgagee as consistent with there being any value in the second security, though protected according to this scheme by a caveat. This seems to me to be very important?—I think this may be done effectually, by permitting a caveat to be entered (by consent of the first mortgagee,) in the name of the mortgagor, or his sequel in right the second mortgagee, for the purpose of preventing a sale by the first mortgagee without notice to the person entering the caveat, but this caveat should be removeable (in case of refusal by the person who had entered it,) by the Court on a summary application.

383. (*Mr. Cookson.*) Suppose an owner of property is borrowing money on the security of that property, it is matter of negotiation and contract between the mortgagor and mortgagee as to what the kind of security is to be. Suppose the mortgagor contemplates having to borrow further sums, it might be matter of contract between him and the mortgagee that the property should be vested in two or three persons satisfactory to the mortgagee, and that those three persons should be the registered owners, and that by a separate instrument it should be declared that they stand possessed of the property in trust to secure to the mortgagee the amount advanced with interest, and subject in trust for the mortgagor—would there be any difficulty, if that plan were adopted, in a mortgagor afterwards borrowing a further sum, declaring that those trustees, subject to the first mortgage and to the power of sale which they would possess, should stand possessed of that security in trust for the second or third mortgages?—I do not think there would be any difficulty. In the case which you are supposing, the trustees on the register would appear to be absolute owners. No caveat could be entered by a second mortgagee against a transfer without their consent.

384. Would there not be greater facility in creating charges?—There would be greater facility than there is at present, for this reason, that the borrower would be able to rely on information furnished by trustees who had no interest to deceive him but who had an interest to give him accurate information, instead of being obliged to rely on information furnished by a mortgagor who has an interest in making the best of his security.

385. (*Mr. Lewis.*) Then you think that lenders would not be indisposed to enter into such contracts?—I think not, any more than they are at present.

386. I do not think we find such contracts now?—On the occasion of large loans, you frequently find estates vested in trustees for the benefit of contributors to the loan.

387. The third question I was going to put about mortgages is this: whether it appears to you that, in the case of persons lending money on property already charged, and which previous charge was either protected by a caveat or was the subject of registered ownership—whether it would be an objection or an impediment to such a transaction that it would not be known, from the registry of the first mortgage, what were the particulars of it, the amount due, or the rights and powers of the first mortgage; in fact, that the proposed lender would be in the dark as to what he was taking subject to?—So he is now, unless the first mortgagee produces his deed.

388. (*Mr. Walpole.*) Or the borrower gives him information?—That information is purely personal.

389. (*Mr. Lewis.*) Or gives him an abstract of the deed?—That cannot be verified without the inspection of the deed of the first mortgagee. The first mortgagee may say, I will not produce my deed.

390. But solicitors are generally ready to give information?—Yes, but the same information would be given then, as now.

391. If the borrower brought the proposed lender the deeds, and the proposed lender knew nothing of his having got those deeds by illicit means, the lender would be quite safe if he took those deeds into his possession, unless the first mortgagee could prove that he had parted with them innocently?—An instance comes to my mind in which that was done, and in which the mortgagees, who were bankers, were not safe. It turned out that the estate belonged, not to the borrower himself, but to his children, for whom he was trustee, and that it was purchased with trust money, and the title to the estate became the subject of a suit in the Court of Chancery.

392. This is merely preliminary to the point I was going to put. The producing the deeds would be useless, and would not assist the transaction, when the register disclosed the fact of a registered ownership in somebody else, or a prior mortgage protected by caveat, because in such case the new lender would be certain to take, subject to whatever might be the effect of the former transaction?—Clearly, in the case you are supposing, the first mortgagee had obtained a transfer of the registered ownership, and was therefore safe.

393. Or if he got a caveat?—In that case he ought to be safe.

394. The second lender would be unable to obtain any certainty of interest, although he had got the deeds. The first mortgage might have been almost paid off by a process of liquidation, and might be nearly a satisfied mortgage, yet the new lender would be unable to bargain upon that supposition, or to benefit himself, or feel any security, by getting the deeds, which now operate for him as a presumptive protection where he has not notice. Is this or not a circumstance which presents an objection to this scheme?—I do not see that it is. In the first place, when you assume that the second mortgagee gets the deeds, it appears to me that you omit to bear in mind that, according to the proposed scheme, there would either be no more than one deed in the possession of each registered owner, that being the duplicate of his conveyance, (and in the case supposed this would be a conveyance not to the mortgagor, but to his mortgagee,) or, if it were thought right to permit the successive duplicate conveyances to be retained by the owners instead of being delivered up to the registrar on a transfer taking place, there would be a memorandum endorsed on each duplicate conveyance, showing that the property had been transferred to the succeeding registered owner; so that in the case supposed, the mortgagor's duplicate conveyance to himself would carry notice with it that the estate had been transferred to the supposed first mortgagee, who would be the registered owner. Want of notice, therefore, could not be alleged by the second mortgagee, and he will take the property only for such an interest in it as the mortgagor can lawfully give him; it is his folly if he is contented to lend his money without having the title put right on the registry. In the other case you have put—a second mortgagee getting the deeds from a mortgagor who has previously borrowed money upon his estate and given a security by means of a caveat, still remaining himself the registered owner—I think the second mortgagee, neglecting to search the register, or disregarding the caveat which he finds there, ought not to be protected from the consequence of his own negligence.

395. (*Mr. Cookson.*) Do you not think that a system of registration would very much facilitate the division of property with a view to mortgages? At present, you take a mortgage of all the property included in the title deeds. Under the system of registration, would it not be possible to select an ample amount of property for the particular sum advanced, and to make a transfer of that particular property only, so that it would facilitate the division of the property?—Yes, because the titles would be kept more conveniently distinct than they are at the present moment.

396. (*Mr. Lewis.*) Do you really think it is necessary, as part of a system of registration of title, that the land should be tied up while the stop or caveat exists; is it indispensable to do that; can we not find an alternative?—Do you mean a transfer of the registered ownership?

397. Yes. Must it be an invariable and absolute rule, that the caveat shall stop the transfer (until removed) as to all interests that are protected by caveat? Can you not for this purpose distinguish between different classes of interests that are protected?—You must distinguish what classes of interests shall entitle persons to lodge caveats, but when you have once ascertained that a caveat is there, the caveat must stop the transfer. What are the particular interests which shall entitle the party to stop the transfer, or, in other words, to have the caveat entered, is of course a question that deserves a great deal of consideration.

398. (*Mr. Cookson.*) Suppose a caveat is entered in respect of an equitable mortgage of property, would there be any objection to allowing the transfer of the property, subject to that claim, to be protected by caveat to a purchaser?—The difficulty then is, that you make the registrar a judicial officer for the purpose of ascertaining what is the nature and extent of interest protected by the caveat.

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399. Suppose the purchaser takes the property subject to that charge, would it not be easy to arrange that the caveat should be removed, in order to the transfer, and that the caveat should be lodged again as to the same security?—That is matter of arrangement.

400. (*Mr. Lewis.*) You mean that consents need not be provided for?—Yes, but the case which I understood Mr. Cookson to put was, that you should be at liberty to transfer without the consent, and in spite of the dissent, of the person having the caveat lodged. I say if you are to do that, you must make the registrar a judicial officer to ascertain what is the extent to which that caveat restrains the sale.

401. Does it necessarily involve that alternative? Why should not the registered fee be transferable, subject to the dower and curtesy of the wife of the last owner? Why should the protection of that dower or curtesy prevent the transfer of the fee simple, which is partly in possession in the case of dower?—The dower would cease to be a legal charge, and I believe that formed part of the proposal.

402. Necessarily, as incident to this plan, are we to extinguish dower and curtesy?—Dower and curtesy we should propose to extinguish, as having legal incidents, though I do not know that it is absolutely necessary to the plan; it would, I think, be better not to make the purchaser the person to see that the estate is free from dower or curtesy.

403. It is mentioned that it might be, not that it should be?—Those two instances were referred to by Mr. Bullar.

404. Would not the abolition of dower and curtesy embarrass the scheme of registration in a way which the public would not readily consent to?—There are very few doweresses in practice, and very few entitled to the estate by curtesy.

405. It very often happens that a widow is provided for in no other way?—You are referring to exceptional cases. If you made them charges in equity, the widow would have her protection.

406 If charges in equity according to this plan, they would be protected by caveat?—She could not stop the sale; she would have notice of the intended sale by means of the caveat; but on the purchaser admitting that he took the estate subject to her claim to dower, the transfer would take place, and a fresh caveat would be entered against a transfer by the purchaser.

407. Viewing it as regards the registered ownership, and considering that the registered ownership is to be subject to caveats, it will be for determination what interests are to be protected by caveats. We will suppose that undetermined. Do you think there might be a distinction laid down as to interests which being protected by caveats should stop the transfer of the registered fee, and those interests protected by caveat which should not prevent a transfer of the fee, but admit of a transfer subject to those interests? Do you think such a distinction is practicable? Would it not be the means of removing a great difficulty in this plan, if you should devise such a distinction?—I think there would be great difficulty in it. I have not considered the plan with reference to any such arrangement. My present impression is, it would throw too much responsibility on the registrar.

408. Let me put a case to illustrate my meaning. The equitable mortgagee may not care to clothe his security with the legal estate. He may not care to do more than to rely on his deeds and caveat. Why should you, on account of the existence of the equitable security which may be paid off any day, prevent a transfer of the registered ownership being made subject to that, if the equitable mortgagee has not chosen to come in and take the transfer?—I am supposing a caveat is lodged, and for the present purpose, that by the scheme as proposed the caveat operates to restrain the transfer. In the case you are putting, it appears to me that the mortgagee, who is so indifferent to have the registered ownership, would be equally willing to remove his caveat in order that the transfer may take place to the new owner, and put it on again, the new owner admitting that he takes subject to to the mortgagee's charge.

409. It is more circuitous, and would involve more of action on the part of the mortgagee?—I do not think it would; for at the present moment you would have to go to the mortgagee and ascertain the nature of his interest. No one would purchase the fee without knowing what was due to the mortgagee.

410. (*Mr. Cookson.*) And get his acknowledgment?—His acknowledgment that so much was due and no more.

411. (*Mr. Lewis.*) Since we are so near in our object, why do you prefer a formal cancellation of the old caveat and putting it on anew, to letting the transfer be taken subject to the caveat?—For this reason, that you should make the register clear and clean, that you should not throw on the registrar any investigation of rights of parties, but that the parties themselves should protect their own rights, and that the registrar should have nothing more to do than to transfer the registered ownership.

412. What I am aiming at is this: that sales of equities of redemption occasionally take place, and it would be convenient to facilitate such transactions. Can you not accompany the right of the purchaser in such cases with the registered ownership, subject to the right protected by the existing caveat?—I think that sales subject to mortgages, which mortgages are not intended to be paid out of the purchase money, are uncommon.

413. They are not infrequent, but I think it is sufficient that they do in fact occur, and we ought not to narrow the range of dealings with land?—I do not propose to do so. I think the object should be to increase the facilities of dealing with land, and I think that

object will be attained, to a considerable extent, by the simplicity and certainty of the proposed scheme.

414. Then it will be a great thing, when the substantial ownership of the land is transferred, to give it as often as possible the benefit of the registered ownership. In many cases you sell land without requiring the concurrence of parties who have certain interests which they are content should attach on the property, in the hands of B as well as in the hands of A; and do you not think you should furnish facilities for their not being disturbed or needlessly applied to?—Then that would involve giving the registrar a larger amount of discretion. You must then put the registrar in the position of a judge, or have the party's assent and acknowledgment of their rights. If the parties admit what their rights are, and define those rights, the transfer on the registry is a mere matter of form to follow afterwards.

415. You are assuming that the register does not disclose the nature of the right; it would assist my view if it did?—My view is, on the contrary, that for the purpose of a sale and transfer, the register should be as it is in stock, a simple transfer of names with a description of the property, and that the purchaser should have no concern whatever to inquire what are the rights of the parties except as they appear from the register; because, if otherwise, you involve yourself in the great difficulties of conveyancing which at present exist from impressing on the land itself all the limited, successive, and derivative rights and equities of the parties interested.

416. (*Mr. Cookson.*) No one would purchase an equity of redemption without communicating with the party who held the mortgage, to ascertain the amount of the principal and the amount of the interest that was due?—I have just purchased for a client of mine a large estate that happens to be subject to a mortgage, and which, by the terms of the mortgage contract cannot be paid off until next year. It is a matter of serious consideration for me, to ascertain by what means I can really protect myself—how I can get an effectual conveyance of the estate at the present moment. I must be content with taking a transfer of the equity of redemption.

417. You would not even do that, without ascertaining from the mortgagee what his charge amounted to?—No; in the case I am referring to, there is no difficulty in ascertaining that; but the difficulty is to ascertain that there are no mesne incumbrances.

418. (*Mr. Lewis.*) Let me put a case which is not a mortgage; I must assume for the present that dower and curtesy will not be extinguished by the scheme of registration, for I think it would embarrass the plan if we attached to it any such recommendation. Does it not appear to you in the case of dower and curtesy, that there might be a transfer of the registered ownership, leaving the dower or curtesy, whether it were a legal right or only an equitable one, just as it was before the transfer, only the fee after the transfer would be in one man instead of another?—I think it might be done, but I should prefer the simple plan of making these claims equitable. One of the suggestions connected with the scheme is, that there should be a real representative, in which case the duty of protecting these equitable interests would have devolved upon him.

419. That has been lately objected to in the House of Lords?—I know it has been, and I am sorry for it; but that was one of the means by which the right of doweresses or tenants by curtesy would have been protected.

420. Take a rentcharge under a family settlement, which is not an uncommon thing that would be protected by a caveat probably. Your scheme of an index of rentcharges refers, I presume, to rentcharges in fee. Is it so?—Not necessarily. The term rentcharge would have included that.

421. Now I cannot see why the dealing with the fee simple, which is all the interest in the land minus that rentcharge, should be arrested by the fact of the rentcharge existing and being protected by a caveat?—It is not so intended. The proposed plan of registration would admit the registration of the rentcharge as a legal charge on the estate; and I do not see that any caveat against a sale would be necessary; the probability is that, in the case which you are supposing, the sale would not be so restrained, as I understand. You are supposing the case of a family settlement, which ordinarily contains a power to trustees to sell.

422. It might not?—If the settlement were well prepared, it would.

423. We must take the less probable hypothesis to test our scheme. We must suppose that by some slip the power does not exist, or is not available; because our scheme will be tried, not by the common run of cases, but by the exceptional and peculiar cases, and it must, as far as it can, meet those?—It must be made to embrace those, but I do not think you must legislate for the exceptions.

424. Acute men will find out the value or sufficiency of this plan, according as it can pass through the ordeal of peculiar cases. Now, it strikes me that this instance of the rentcharge would involve no complexity of registry?—In the case you are putting, the trustee would not be entitled to sell, and ought therefore to be restrained from selling.

425. I am supposing the fee to be concentrated in an individual who has a clear title, subject to this one rentcharge; why should he not be entitled to transfer the registered ownership?—It seems to me that the scheme, as proposed, would embrace that very case, because here a legal rentcharge would be entered in the column applicable to rentcharge, and the estate would be saleable subject to that charge.

426. (*Mr. Walpole.*) The great object of your scheme is to have a registered ownership

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for the purpose simply of making and disposing of the property?—Yes; that is clearly the great object.

427. The main object of the register?—Yes.

428. All those persons who now have a right to prevent the disposition of the property you would wish, generally speaking, still to have the right of preventing the disposition by means of entering a caveat, which should imply that before the disposition is made their consent should be obtained?—Yes.

429. In addition to that, there are people who have got interests in property who cannot, by reason of those interests, prevent the sale or disposition of the property. Is not that so?—Yes.

430. Those interests you would wish to be on the registry, in the shape of a notice under some column or head, without the power of stopping the sale of the property, but affording the means of informing the purchaser of the interests the property is subject to?—Yes.

431. As to both those classes of cases—the classes of cases where persons are to have the power of stopping the sale of property, and the classes of cases of persons who have no such power—you would allow a subordinate registry, that they might carry on those other interests from one to the other in the way they chose to dispose of them; so as to give them as great facilities of transfer as the owner of the fee would have as to the fee simple. Is not that so?—Yes.

432. Then the main difficulty which we should have to consider in that part of the scheme would be, what classes of cases you would put into the column with the power of stopping the sale, and what classes of cases you would put into the column which merely constituted notice?—Yes.

433. Now, in the classes of cases which might have the power of stopping a sale you would not necessarily put a common rentcharge?—Certainly not.

434. Nor, I suppose, if you registered the estates in dower and curtesy, would you put either of these estates in that column?—Certainly not.

435. Nor would you ordinarily regard those as persons who would have a right to stop the sale of the property?—No.

436. But you would include in that column tenants for life of the estate who have a right to possession, and tenants in remainder who ought not to have the estate taken away from them without their consent?—Yes; those persons would be included, unless the trustees of the settled estate had a power that overrode their interest.

437. And there might be other classes of interests protected generally by trustees who would take care of those interests?—Yes.

438. But under the column which constitutes the column of notice, you would include rentcharges, tenancies in dower, and tenancies in curtesy, and leasehold estates?—Yes; though there is some little difficulty about dower and curtesy, because they arise by operation of law and not by contract.

439. And you would give persons in that column the power of having a subordinate registry with reference to their interests, that they should have the same facilities of transfer as the owners in fee would have as to the fee simple?—Yes.

440. And you would add to the subordinate registry those who were in the column of the classes of interests that have the power of stopping the sale?—Yes.

441. Then, in short, by that scheme of yours you would give anybody who has now a disposable interest in land the same power as he has now of disposing of that interest, with this difference, that it would be a simple transfer instead of a long conveyance?—Yes.

442. (*Mr. Lewis.*) Do you mean transfer by registry or by some deed?—A deed which should be registered.

443. That the registry should not be the conveyance?—The conveyance should not be complete until it is registered.

444. It is suggested somewhere that the registry itself should be the conveyance?—My view has always been that there should be a conveyance.

445. (*Mr. Walpole.*) A simple certificate that A B was the owner?—Or perhaps a simple transfer or conveyance, or duplicate, one of which should be registered.

446. (*Mr. Lewis.*) Some document apart from the registry?—Yes.

447. *Mr. Walpole.*) A simple document?—Yes, as in the case of railway shares, only in duplicate.

448. (*Mr. Lewis.*) So that the party would have something to produce?—Yes, which would be in effect a certificate of ownership.

449. And which might be in duplicate?—Yes.

450. (*Mr. Walpole.*) And you might keep up those certificates of ownership in this way: that when a purchaser conveyed the property, he could, on the back of the certificate, endorse the name of the new purchaser, and give the new purchaser the certificate?—Yes; it has been proposed to make it the duty of the registrar to endorse the memorandum of transfer.

451. (*Mr. Lewis.*) There is one question bearing on this which I wish to put. I presume it is proposed that dealings with those interests which are protected by caveat and which might stop the sale should be themselves protected by caveat. Now, suppose the case of a mortgage protected by caveat and a transfer of that mortgage. The person who

is intended under that state of things to have the power of stopping the sale is the transferee of the mortgage?—Yes.

452. I presume it to be intended that that transfer should be protected by a caveat against the registered fee; that the transfer of the mortgage should be protected by a new caveat striking out the first, which protected the mortgage before the transfer?—That would be a substitution. It would be cancelling the old caveat, and entering the caveat in the name of the transferee of the mortgagee.

453. Then it comes to this, that the transmission of interests protected by those caveats which give the power of stopping the sale, may be the subject of caveat substituted for the caveat entered before the transmission of those interests?—It certainly would not be proposed that you should have a long string of caveat against caveat.

454. No, no—in lieu of the former caveat?—You are supposing that the benefit of the caveat has been transferred, if I understand you, from A to B.

455. Yes?—Then it would be the duty of B to see that his name had been substituted for A's.

456. It would be his interest?—Yes.

457. (*Mr Walpole.*) Would you make it his duty?—In this sense, that the obligation should devolve on him to protect his own interest.

458. (*Mr. Lewis.*) Now the interest protected by the caveat may be the subject of, say, three separate dealings; it may be the subject of a mortgage, a second mortgage, then a sale; there is a subdivided set of interests carved out, to the protection of each of which it is necessary that the same right of stopping the sale should be incident, and which was incident to the subject before it was subdivided. Is it intended that the caveat entered against the fee should be the subject of such a transmission?—It is not contemplated that there should be any more than a caveat entered against the transfer of the ownership without the consent of a particular person or persons, or an order of court.

459. Then, if those particular person or persons cease to be entitled to the benefit of the caveat, they must procure the name of the person to whom they have transferred their interest, to be substituted for them; they would consent to the cancelling of their entry of the caveat?—And the substitution of the new name for their own.

460. I observe that you demur to my phrase "transmission of interests;" supposing the transmission of interests should be registered, it would be merely entering new names, that is, the names of those who took under the transmission?—It would be simply a register of names, and of property in which the parties named are interested.

461. Am I not right in concluding from your answer, that those who together should represent the transmitted interest, would be entitled all and each to have their names on the caveat list?—Yes.

462. (*Mr. Walpole.*) Would that be so?—With the consent of the registered owner.

463. Do you propose that each portion of the interest protected by caveat should, on its being transmitted, receive the protection of a new or substituted caveat?—Not without the consent of the registered owner or an order of the court. The benefit of the caveat would belong to the person to whom the interest protected has been assigned.

464. Although there were no caveat?—In equity it would belong to him.

465. How would you work the registry, seeing that the notices for sale to be given to the owners of protected interests, would have to be given to persons whose names did not appear?—It would be given to persons who had entered the caveat, in the same way that a man has the legal estate vested in him, although all beneficial interest has ceased.

466. He would become trustee of the equity for those who derive under him?—Yes; and therefore it would be his duty before he did consent to the sale, on receiving notice of an intended sale, to obtain the consent of those persons to whom he transferred the interest. I do not think that presents any difficulty.

467. It would place them at the mercy of the party to do his duty?—That is always the case of parties dealing with mere equities. We are putting the case of a mere equity.

468. (*Mr. Lewis.*) An equity *in rem*?—Yes, an equity *in rem*—so far as such an equity is to be for the future permitted to exist as a check or clog on alienation.

469. By the caveat?—Yes. I think all those matters might be very easily regulated in practice by arrangement between the parties, transferring and accepting the supposed equity.

470. It seems to me that as a matter of principle you must provide for them?—No doubt, and I think the answer I have given suggests the principle, and that no practical difficulty would exist in working it out.

471. Do you propose as an invariable rule, in all cases which are to be protected by caveat, either that notice should be given to the person who originally entered his name, and he to communicate to those who derive under him, or is it to be a substituted caveat and a cancelling of the old one, or an option to adopt one mode or the other?—What we have proposed is, that the caveat should be removed, not simply by notice to the party who has lodged it, but by his formal consent or by an order of the court. In the case of his interest having been assigned or parted with, he would remain a trustee of the consent for the benefit of persons to whom he had assigned his interest.

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472. Is that an invariable rule, or an optional rule?—With the consent of the registered owner, or an order of the court, the court would have the power of ordering substitution. The court might think proper to order substitution in the presence of the registered owner.

473. Then on the transmission of interests protected by caveat, either the original caveat would remain unaltered (the duty of the party being to take care of the interests of those who derived title under him,) or there would be an option to insert the name of those who take derivative interests?—Yes; that option to be exercised by the consent of the registered owner, or an order of the Court.

474. (*Mr. Walpole.*) Would you have it by an order on the registered owner?—Yes; I do not see why he should not submit to have a caveat entered in the name of A instead of the name of B.

475. That might appear very unimportant to the registered owner, but it would become extremely important to him, if in the course of time the transmitted interests became ten times as numerous as the original interests?—Yes, so it might be; and it sometimes happens in the present system.

476. (*Mr. Lewis.*) If the owner of the interest protected by caveat sells that interest or mortgages it, would it be right that you should leave in him the control over the caveat?—I do not necessarily leave it in him. It forms no necessary part of the scheme that it is to be left in him, because it is competent to him to procure the consent of the registered owner to procure the transfer from the name of A to himself; or if the registered owner refuses to do it, and says, "I will not be bothered with the investigation of the rights of the parties; if you insist on the caveat being entered in the name of another person to whom you say you have transferred your interest, you will do that by order of the Court." All the registered owner is desirous of doing is to protect himself from being mixed up with the equities of the parties. He says, "Go and settle your equities among yourselves, let the judge give an order to transfer the caveat from the name of A to B, and I have nothing more to do with it."

477. (*Mr. Cookson.*) Or from A to B or C D?—Yes.

478. (*Mr. Lewis.*) Then either it will be a judicial proceeding, or the caveat will be left under the control of the party who has ceased to have more than a nominal interest in it, unless the consent of the registered owner is obtained for the substitution of new caveats?—It would be a very summary proceeding, which in practice would be very seldom resorted to. In most cases, the registered owner would be satisfied by the production of the assignment of the interest, and consent to a substitution of the name of the assignee. There are instances now in which an assignment is legally ineffectual, as in the case of a mortgage debt.

479. You cannot assign the right to sue?—Not at law.

480. I think I am right in saying that Mr. Cookson's plan is, that from the time of the registration of title being established as a system, there should be permitted but four of title or conveyance, namely, a conveyance in absolute fee-simple?—No, I do not understand that.

481. There is this passage, "with a succession of absolute fee-simple transfers of land?"—Yes, I noticed that, when I first examined.

482. Having regard to your system of rentcharges, in order that they may be legal rentcharges you must let them in: there must be a variation to that extent?—I stated so in my first examination before the Committee.

483. I see you did, but I wished to get it clearly out. It does not matter as to the principle of Mr. Cookson's plan, but I believe you intended that there should be legal leases, legal rentcharges, and legal registered fees?—Yes.

[The Witness withdrew.]

Friday, 8th September 1854.

Mr. James William Freshfield, Jun. (*Solicitor*), called in and examined.

484. (*Mr. Walpole.*) I believe you are the solicitor to the Bank?—I am.

485. In that character you are, probably, aware of the system pursued at the Bank of putting on distringases as a protection to stock, which prevents the sale of the stock without notice to parties?—Yes, I am.

486. Can you give information to the Commissioners as to the number of distringases upon an average which have been put on stock, or whether the number is very considerable?—The average at present is about 750 per annum. There is a tendency to increase.

487. That has been progressive of late years?—Yes.

488. (*Mr. Solicitor-General.*) Affecting the corpus, and affecting the payment of dividends?—Principally the corpus—almost exclusively the corpus; because a stop on the dividends necessarily comes to an issue in some form at the next dividend day, and therefore, the distringas, except under peculiar circumstances, is upon the corpus.

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489. (*Mr. Walpole.*) With respect to those distringases, do you find they remain long on the stock as protecting interests for a long period of time, or that they are put on to prevent some immediate transfer when a fraud is apprehended?—The large proportion of them remain a long time. They are put on as permanent cautions by some person having either a reversionary interest or some permanent interest.

490. Would your professional experience enable you to say whether it was to protect reversionary interests, for instance, under marriage settlements, or to protect securities for money, or for what purpose they were usually put on?—A large proportion is put on by persons who have purchased reversions. They almost always, as a matter of course, put them on, but we find a considerable number of persons having interests under settlements and otherwise, mere cestuisque trusts, who put them on for their protection.

491. Has that been increasing largely?—I cannot speak of any great increase in that particular class. Within recent times, there is a general tendency to increase; and whenever we hear of any considerable fraud, then there is a great increase in the number of distringases.

492. Now, with reference to those stocks on which distringases have been put, do you find that application is soon made, from an attempt to sell the stock, or anything of that kind, that would lead you to suppose frauds would be committed except for the distringas; in other words, do you find that notice is given to you of an intention to sell the stock, which requires the Bank to give notice to the party by whom the distringas is put on, so as to prevent the sale?—In the large proportion of cases the distringases remain without any actions whatever on the stock. With regard to others, an action may take place without our being cognizant of it, because if the broker puts forward a ticket to transfer, and finds a stop, it is immediately communicated to the parties, and it may go no further; therefore it by no means follows that we should have information of attempts to dispose of stock. But I know, practically speaking, that a large proportion do remain without any action at all.

493. With regard to those that have been acted on, do you find the attempted sale has been followed up by a suit or not?—Yes, occasionally; but that is not the large proportion. In the large proportion, where the application is made to sell the stock, we find that arrangements are made between the parties, and their rights are adjusted in some form without suit; but every now and then suits are instituted. Within the last twenty years the practice has become universal, I may say, to omit making the Bank parties to those suits; and the consequence is, that the questions are raised and rights decided without any interference on the part of the Bank at all, and without our knowledge of the nature of the questions raised.

494. If anybody attempts to sell stock after a distringas is put on, you give the person who puts on the distringas a week's notice?—Yes.

495. And after the expiration of a week the stock would be sold, unless those parties interfered?—Yes.

496. Have you found those parties complain of the notice being too short, or that it has not reached them, or that it is not a sufficient protection to them?—I do not think we have any substantial complaint under either of those heads. Now and then a man complains that the eight days' time is not sufficient, but the same man would complain if a month's time were given. I do not find that in practice the time is too short for any reasonable purpose; and I find that when the objection is made it is easily removed.

497. Then there is reason to suppose that the notice reaches the party, and that there is sufficient time to prevent the sale, if the sale ought to be prevented?—I think always. I do not recollect a case in which a party complained that he had not been able to make use of the notice in consequence of its not reaching him, or the shortness of time after it reached him. I have frequently known of cases where parties have come and asked for three or four days' time, and in those cases we have generally exercised a liberal discretion; and if we have found that the man has not had time to obtain the relief he desires, we have extended the time.

498. Then, as regards stock, you consider that the system of distringas affords a complete protection to parties interested in the stock?—Yes, as far as it goes.

499. How much further would you wish to extend it, or in what way, in order to make the protection more complete?—There are cases in which it will fail, as all protections of that sort will. The party who has put on the stop may have died, or his solictor may have died, and the object of the stop may have been lost sight of, but as far as protection can reasonably be given, I think it is given by distringas.

500. In those two last cases you have spoken of, the death of the party or the death of the solicitor, have you ever had complaints made that the proper notice has not reached the parties really interested, so that sales have been improperly made afterwards?—I think not. We take great pains in those cases to endeavour to find out the person substantially interested in the stock, and to give him notice if we can, but we find that sometimes impracticable.

501. I suppose the notice is always sent to the person according to the description of his place of abode when he gave you the notice?—To the solicitor. We sometimes find that the solicitor is dead, or has retired from practice, and we endeavour to find out his successor.

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502. Do you find they alter the place of residence on their own account, that they come and tell you that the solicitor is dead or has changed his place of abode, and desire you to send the notice to another place?—Sometimes.

503. That would be a new distringas?—Where there is an attempt to alter the name, we require a new distringas. In cases of change of residence we do not.

504. In the case of the death of a party, you would have a new distringas?—Yes.

505. (*Mr. Solicitor-General.*) The Bank takes no notice of equitable interests in stock?—None.

506. The practice of distringas, therefore, has been the consequence of that principle?—Yes.

507. And that has become now so common, that the distringas may be described as a permanent form of security for the party having an equitable interest?—Yes.

508. Have you ever found any difficulty in keeping a registry of the distringases?—No, none.

509. In what form is the Bank in the habit of registering such distringases, if I may properly ask you?—Every stockholder, you are aware, has an account open for him in the Bank ledger in his own name, in which is entered the transfer made to him, and the transfers made from his account; that shows what stock is in his name, and no transfer can be made by that individual without referring to that ledger, and upon that account, immediately under his name, in a conspicuous part, they enter "Stopped by distringas," such a date, and that is all that that account shows. Then, for anything beyond that, the parties are referred to the solicitor, and we keep a register of the distringases, and of the stock to which they apply.

510. And, therefore, if the distringas were entered with a certain reference to the party beneficially interested in the stock, and that party's name was entered in your register, the security of the distringas might be well extended to his personal representatives?—Yes, I think that it might be extended to his personal representatives; but it would involve, of course, the machinery for finding out those personal representatives, and so on, which at present the practice has not contemplated at all. It would involve very much more of detail, and much more of arrangement, than at present has been introduced into the system.

511. But you see no reason why that might not be met and provided for by proper regulation?—I think it might be met and provided for.

512. So that, in point of fact, from your experience in matters of distringas, you think it would be possible to devise a system for perfectly securing the equitable interest and the equitable claim by means of a distringas, or of something corresponding thereto, the property both legally and equitably all the time remaining apparently in the registered owner?—I think it would. At the same time, when you are dealing with stock, you must recollect that you must not encumber it with cheques, that would materially affect the sale of it, by rendering necessary a course of inquiry into distringases and stops, otherwise you would do mischief in another direction.

513. When a party applies to put in a distringas, does the Bank require any evidence of his title to put in that distringas?—None whatever. He brings a writ from the court. To obtain that writ he must have made an affidavit that he had a beneficial interest in the fund.

514. That has been the course since an alteration was made not very long ago, in the practice of obtaining a distringas?—It was provided when the jurisdiction of the Court of Exchequer was transferred to the Court of Chancery. Up to that time there had been no substantial recognition of the practice of the Bank in regard to distringases; and the first recognition took place, I may say, by that Act of Parliament.

515. The distringases are supposed to have originated under the authority of the Statute of Queen Anne. You are aware of that?—No, I am not. I have always conceived distringases respecting stock to have originated upon the assumption that a bill had been filed against the Bank of England, by some party claiming an interest in the particular fund, and he issued his distringas, which was the first process against the Corporation in the Court of Exchequer, and accompanied that with notice that a bill had been filed, and that the object of that bill was to stop the transfer of certain funds, and the Bank acted upon that notice, on the assumption that it was true.

516. But practically, before the abolition of the Equity side of the Court of Exchequer, a bill was never filed?—No, the bill was not filed.

517. Therefore the Bank requiring now no evidence, any individual obtaining a writ of distringas might affect stock to any amount?—Yes, certainly.

518. And though that is possible, yet from your long experience you have never found any material inconvenience result from that practice?—Before the Act of Parliament passed requiring the affidavit to be made, we did exercise a very liberal and large discretion in removing the distringas instanter, if we had reasonable ground for thinking that there was no right to support it, and I think that upon several occasions inconvenience has been pointed out as likely to arise if that were not done, and we have acted upon that.

519. But since the alteration in the practice, you are not aware of any material inconvenience that has arisen from that circumstance?—No, no substantial inconvenience.

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520. (*Mr. Walpole.*) This is the form of affidavit, I believe, on which the distringas is usually issued [*handing it to the witness*] ?—Yes.*

521. Would you put that in your evidence?—Yes. There are orders of the Court of Chancery which would probably be the more convenient form.

522. Would you put in the form then?—Yes, the orders state the whole.

523. That is the writ?—Yes.†

524. And then the order for discharge is by petition to the court?—Yes. [*The witness produced a book showing the form of entering distringas.*]

525. (*Mr. Cookson.*) And there is an alphabetical index to that book?—Yes, there is an index at the beginning of the book both of names and of stock. The parties come to us very ill-informed sometimes, and it is convenient to have the reference both to names and stock.

526. You mean the reference to the name of the person who lodges the distringas and the name of the stockholder?—Yes.

527. (*Mr. Walpole.*) Could you at all tell us the length of time during which any distringases have remained on stock?—I think we have distringases that have been there for twenty or thirty years.

528. With regard to those cases, have you no apprehension of the stock being parted with by the notice not reaching the parties?—In practice, I think we do not find that that is so.

529. Of course, the longer the time the distringas must remain on the stock, the greater the danger would be that the written notice of the distringas might not reach the parties? —Yes; where it has remained that length of time, you may assume it is some trust, and that the trust property is about to be distributed honestly and bonâ fide; and in cases of that sort, I think we have no very great difficulty in finding out who it is that has put the stop upon the stock.

530. Supposing there was a registration of the ownership of landed property, which would give the owner so registered as full a power of disposing of that landed property as the owner of stock now has, do you think by a similar system of distringas you might protect the equitable interest against any improper disposition of that property by the registered owner?—I think that the disposition of land in such cases might be restrained by a proper system of registration, as in the case of stock; but it would be necessary in that case to provide for some mode of bringing the claim of parties upon the register, because in the cases of land more particularly, there are the claims of infants and of persons not capable of acting for themselves.

531. But if there were trustees for those infants, say, for instance, in the case of a settlement or conveyance, they might as easily put on their distringas as against the registered owner, as they could now put it on against stock, if they were persons sui juris?—I presume the trustees would be the registered owners, and therefore you would require somebody to represent the cestuique trusts as apart from the trustees.

532. But supposing you had, under the settlement, trustees appointed who were to be registered owners, and who were made trustees for that sole purpose, and you carried on the trusts of your deed in favour of infants, by appointing protectors to those infants, and giving them the power of entering distringases or making claims on the property for the protection of the equitable interest, those protectors would be in a similar situation with reference to land as adults are now with reference to stock?—Certainly.

533. There would be no difficulty in protecting the interest of infants or of married women, or of persons not sui juris, if an alteration in the form of the settlement were made for that purpose?—I see no practical difficulty in that.

534. Now, from your experience with reference to stock, do you think there would be no danger in the notices, in the course of a long series of years, not reaching the beneficial owners in land?—I think in the case of land you would of course have more particulars, and more means of obtaining information to enable you to trace out the claimant, than we have in the case of stock; and you might require any amount of particulars to be entered on your register that was thought desirable: and therefore I do not anticipate any such difficulties upon that head as should materially influence any decision you may come to. That there will be cases of difficulty, I have no doubt, because you will have cases of parties who have gone to the colonies, and who have been lost sight of, and numerous cases of that description;

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* Form of Affidavit.

A. B. [*the name of the party or parties on whose behalf the writ is sued out*] *v.* the Governor and Company of the Bank of England.

I of do solemnly swear that according to the best of my knowledge, information, and belief, I am [*or if the affidavit is made by the solicitor, A. B. of is*] beneficially interested in the Stock herein-after particularly described, that is to say [*here specify the amount of the Stock to be affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing*].

† Form of Writ of Distringas.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriffs of London, greeting. We command you that you omit not by reason of any liberty, but that you enter the same and distrain the Governor and Company of the Bank of England, by all their lands and chattels in your bailiwick, so that they or any of them do not intermeddle therewith until We otherwise command you; and that you answer Us the issues of the said lands, so that they do appear before Us in Our High Court of Chancery on the day of to answer a certain bill of complaint lately exhibited against them and other defendants before Us in Our said Court of Chancery by complainant; and further to do and receive what Our said Court shall then and there order in the premises, and that you then leave there this writ. Witness Ourself at Westminster, the day of in the year of Our reign.

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and your registrar must, no doubt, be invested with powers judicial as well as ministerial, to enable him to dispose of cases of that sort.

535. Do you think that a written notice for the purpose of protecting equitable interests in land, having regard to the probability of the equitable owners being far off in many instances, and in other instances having died, would be a sufficient protection for those equitable owners?—I should say not; nor do I see, in the case of land, any reason for limiting it to that short notice. In the case of stock the immediate power of disposal is of the last importance, because the market is liable to fluctuate; but in the case of land, it cannot be of any great importance whether the notice is a week or a month. Therefore it is one of the grounds on which I come to the conclusion that the system might be adopted. It might be modified in that respect, as I take for granted it would.

536. (*Mr. Cookson.*) It might also be modified by requiring, in the case of distringas or caveat entered by parties on land, that the distringas should not be removed without the consent of the party litigating it, or an order of the court or judge?—Certainly.

537. And that would be an additional protection?—I am strongly of opinion that your registrar must be a person capable of exercising judicial as well as ministerial powers in reference to these stops. In the Bank we exercise a considerable discretion, and we find it necessary to do so, and we are enabled to do it in consequence of the very infirmity of the process itself; but if the rules were rigid affecting distringases, we should be compelled to refer the parties to a judge in very numerous cases where we now dispose of them, and so you will find it in the case of land. The registrar must have the power to decide that the notice was not necessary, and he must have power to decide what notice is sufficient.

538. He must be a judicial as well as a ministerial officer?—Yes, I am quite satisfied that that is of the last importance.

539. (*Mr. Lewis.*) I wish to ask you whether you are aware that a considerable number of distringases are needlessly troublesome and groundless? whether people put on distringases, assuming they have a beneficial interest? whether to any considerable extent people are found to be able to make that affidavit, and to get the writ, having, in fact, no such interest as ought to entitle them to interfere?—I think not to any considerable extent. If it takes place, it arises from mere wrongheadedness. It is brought to so short an issue that a man cannot hope to obtain any advantage by putting on a stop of that sort, and driving the other party to make a compromise; but sometimes from mere wrongheadedness we have had a question of that sort; and I have had a case of this sort, a man endeavouring to put a succession of stops on in other names when we have taken one stop off. We deal very shortly with that.

540. (*Mr. Walpole.*) How do you deal with that?—We give him notice, that unless he gets an injunction within 24 hours we will remove his stop, and do it.

541. You exercise a sort of discretionary power where you see improper stops?—Yes: and you must provide for that.

542. You would give the registrar full power?—A judicial power.

543. (*Mr. Cookson.*) And you consider that the public is protected by that exercise of discretion?—I think it is quite necessary; and that unless we did exercise that discretion the system would become liable to abuse.

544. And no injury has resulted from the exercise of it?—Certainly not.

545. (*Mr. Lewis.*) You are responsible as between yourselves and the party bringing in the distringas, as to the degree of attention you give to that distringas? the exercise of discretion is accompanied with little responsibility?—As solicitors, I think we are responsible for the due discharge of our duty.

546. In evidence before the House of Commons it was stated that the Bank was responsible as between itself and the party putting on the distringas, for any default of the notice reaching the proper hands, or for any premature payment in allowing the transfer?—I should not be prepared to admit that broadly.

547. Without asking you anything that ought not to be stated, can a case be made out of responsibility as between the Bank and the party putting on the distringas, in case of anything being done prematurely, or not with sufficient care?—The Master of the Rolls, in settling the orders in relation to the distringas, was very careful not to bind the Bank. He told me he wished to protect the Bank in giving notice to the parties without binding the Bank; and I am not prepared to say that the Bank is under any pecuniary responsibility.

548. I wish to put the question in a way that is not improper; but it is stated in the evidence before the House of Commons that those are questions that the solicitor to the Bank settles as between the Bank and the party putting on the distringas?—We have not had any complaint as to the administration of this duty, and that is the best answer possible.

549. (*Mr. Walpole.*) I see by a Return moved for by the Solicitor-General in the House of Commons this year, that the number of accounts in the Bank appear to be 264,479; that probably is correct?—Yes.

550. And the number of accounts in the names of one or more holders are 117,828?—Yes.

551. I perceive that the number of distringases lodged is 3,593 during the last five years?—Yes.

552. And of these, there have been warned off 331, and injunctions obtained to restrain, I suppose, the sale of the stock, 31?—Yes.

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553. Now, having regard to those numbers, I wish to ask you whether you are in a situation to give us any information as to whether those distringases have been put on the accounts, where there are single holders, or where there are two or more holders, in the greater number of them?—I am not at the present moment able to say, but I could see.

554. And you could also see, perhaps, whether distringases are put on when accounts are apparently reduced to a single owner, having been in joint names before?—They seem to me to be almost all joint accounts.

555. Could you give us the information as to whether they were on joint accounts after one or two lives had dropped?—Yes.

556. (*Mr. Cookson.*) Do you think there is any necessity for protection being given under any system of registration to the parties beneficially interested in land, beyond the protection that is now given, under marriage settlements for instance. You know that under marriage settlements the estates, though limited in strict settlement, almost always contain a power of sale vested in trustees, with the consent of the tenant for life, during his life, but afterwards in their absolute discretion. Do you think it is necessary or desirable that any protection should be given to parties beneficially interested under such settlements, beyond what is given under the present system?—Generally speaking, trustees are honest, and faithfully administer their trusts; and, generally speaking, we endeavour as much as possible to oust the equitable protection which the Court of Chancery gives, by requiring the concurrence of the cestuisque trusts, and that practice certainly would lead to the conclusion that trustees may for the most part be allowed to deal with property without the concurrence of cestuisque trusts. But I think in the case of land there is a distinction, which is this: you would find that in the case of stock the dealings in settlements are, to a considerable extent, among persons more accustomed to business than in the case of land. In the case of land, you have the class of persons in the country not so well acquainted with the mode of protecting their rights as in the case of persons interested in stock.

557. The case I put was not as between land and stock, but as to cases of land limited by a settlement under the present system, and whether you thought that under the new system it was desirable that any greater protection should be given to parties beneficially interested than was now given under an ordinary settlement with power to trustees to sell?—I think certainly not.

558. So with regard to mortgages. Every mortgage contains a power of sale in the mortgagee; that power is usually absolute; but there is provision made that the power shall not be exercised till after notice, and there is also a provision that the question whether there has been such notice or not shall not affect the purchaser. Do you think it is for the protection of the mortgagor that any change should be made for throwing a greater amount of protection around a mortgagor under the new system than he has at present?—I have never experienced any practical inconvenience from an abuse of the power of sale, nor do I think it objectionable. Until recently the power of sale was not introduced in large mortgages of land, but it is becoming more usual. In the old mortgages you never saw the power of sale.

559. (*Mr. Cookson.*) You are speaking of mortgages twenty or thirty years ago?—I should say, ten years ago. It is getting now more usual.

560. (*Mr. Walpole.*) And will increase probably?—Yes.

561. (*Mr. Wilson.*) Do you think that landowners would allow their lands to be put into the name of a mortgagee, so as to represent him on the register as the absolute owner? Would that be tolerated in this country?—With their present feelings, they certainly would not tolerate it. Not only that, but they would be very averse to allow their mortgages to appear on a register; but we know that necessity compels mortgagors to submit to what the law requires.

562. But if you could have a perfect register of title, without necessarily disclosing mortgages, would it not be a great advantage?—My impression is, it is better to disclose the mortgages My impression is, that a register disclosing the mortgages would be better. That is my decided opinion

[The witness withdrew.]

Tuesday, 12th September 1854.

LIEUTENANT-COLONEL DAWSON, R.E., (*Assistant Copyhold Tithe Commissioner*), called in, and examined.

563. (*Mr. Walpole.*) I believe you are connected with the Tithe Commission?—I am.

564. Have you read the evidence which Mr. Blamire has given before this Commission?—I have.

565. That evidence was taken with a view of seeing whether any system of maps adopted by the Tithe Commissioners would give a pretty accurate account of the different landed properties in the country, at least, of the different properties in different parishes. Now, do you think that any system of mapping which you have got in the Tithe Com-

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missioners' Office would assist this Commission in framing a system of maps, for the purpose of having a registration of title of the different properties in the kingdom?—I have no doubt that the maps in the Inclosure and Tithe Office could be made available for the purpose of registration to a very considerable extent. I have read Mr. Blamire's evidence attentively, and I concur in the statements which he has made. I do not see any necessity for adding materially to what Mr. Blamire has stated, but the observations that have occurred to me, I shall be happy to communicate, if the Commissioners wish it.

566. Is there any statement in Mr. Blamire's evidence which you think requires qualification on any material point?—It appears to me that Mr. Blamire's evidence, as it was taken, may possibly lead to the conclusion that the cost of an original survey and map of the entire kingdom, must now be incurred for the purposes of registration; whereas in a great majority of the parishes, all that would be essentially requisite is a revision of existing plans; and in this view of the case Mr. Blamire and myself perfectly agree. I will, however, state generally the observations which have occurred to me, and I shall be happy then to supply any further information that you may require. Assuming, as stated at the end of Mr. Blamire's evidence, that the plan contemplated is a kind of voluntary registration founded on maps, with books of reference to the maps, and the different properties, and that the thing wanted is to ascertain what would be the expense of such a system, and how to keep up perfect accuracy of description, and at what expense, supposing it were once started: It appears to me that a perfect system of registration should be founded on a map; because, independently of the statement of ownership and occupation, it is necessary to describe specifically certain particulars of the ground itself, its locality, and its acreable contents, which can only be satisfactorily done by reference to the ground, or to some representation of the ground on paper. A plan is a pictural representation of the ground, and of the fences and objects which occupy its surface; and if the plan be made with sufficient accuracy, it may be used for the purpose of reference equally with the ground. The practicability of making a plan, which shall afford a correct representation of the ground, and of all the fences and objects on its surface, will hardly be questioned. Evidence was given on that subject before Lord Langdale's commission, by myself and by the executive officer of the Ordnance Survey department, to an extent that will probably render further evidence unnecessary now. You may safely consider it to have been satisfactorily established by the evidence of practical men, that a perfect plan of any landed property can be made, and that no subsequent alterations in the details of the property can be made on the ground, which may not be set out from time to time with equal accuracy on the plan. The plan therefore, for the purpose of reference, would be even more useful, as it appears to me, than a reference to the ground itself, because the plan can accompany the register, and may be used apart from the ground; and in the event of alterations taking place subsequently, not only would those alterations be shown on the plan, but the previous circumstances of the ground would be shown also. You would have, in fact, on the plan, an illustration of the existing title, and a representation also of the titles from which the existing title was derived. Mere verbal descriptions of property, as I have generally met with them, run thus: a parcel of land is described as the property of A. B. and in the occupation of C. D.; that it contains so many acres, roods and perches, or thereabouts, or be the same more or less; that it is called so-and-so; and is bounded on the north, east, south and west by certain specified roads, or rivers, or by lands belonging to E. F., G. H., and so on. By such a description, it is impossible to say what the shape of the parcel of land is, whether it be long or broad, round, angular or square; whether the fences or boundary lines are crooked or straight; or what is the general direction of the fences with reference to the true or magnetic meridian. I have had occasion to read many descriptions of the boundary lines of parishes, and I have rarely found one that was not capable of correction with regard to the points of the compass, and sometimes in other particulars. Now a plan affords full and satisfactory information on all these points at a glance, and shows also the position of the parcel of land with respect to other lands, buildings, boundaries, and permanent landmarks throughout the parish. A perfect stranger to the parish may, with a plan in his hand, walk to any specified parcel of land, without making a single local inquiry; and by means of a plan scientifically constructed, he might restore all the fence lines and boundaries of property to their true positions, in the event of their being at any time displaced. It would appear to me very desirable, but not indispensable, that the maps used for registration should be critically correct.

567. By "scientifically and accurately constructed," you mean that the parish should be surveyed by scientific people, and the results given?—I mean that the plan should be constructed upon a basis of triangulation, and according to the principles of science.

568. Are your maps in the Tithe Office so constructed?—Our first-class maps are. What I should deem to be essentially requisite for registration would be, a map constructed with such a degree of accuracy, or made with so near an approach to accuracy, as to suffice for identifying upon the ground every separate parcel of land which is set out and described in the register.

569. In short, we might take your first-class maps as an example of what you mean?—The first-class maps, certainly, and also a great portion of the second-class maps.

570. We may, at all events, take your first-class maps as an example of what you mean by "critically correct"?—You may take those as an example of what are critically correct. But there are other maps which we do not know to be critically correct, but which, I

believe, would be found sufficient for the purpose of registration. And I should say generally that every plan constructed from bonâ fide chain measurements on the ground, and every carefully drawn copy of a plan so constructed, to a scale of from three to six chains to the inch, would be sufficient for the purpose.

571. You would take different scales for houses and land?—Certainly; I am speaking now of the plans of rural districts. The errors in the acreable contents of fields, calculated from such plans, should not amount to more than about two or three per cent., a quantity which is inappreciable by the eye on the ground; and as a test of the accuracy and sufficiency of plans offered for registration, I would suggest that the acreage of all the fields should be computed in the office from the plans; and if the discrepancies in the quantities obtained from the plan, as compared with the statement and the country, were tolerably uniform, and did not exceed two or three, or at the outside, five per cent., it might fairly be assumed that the plan had been made from bonâ fide chain measurements; and I believe it would be impossible that any plan which had not been constructed from chain measurements could escape detection when such a test was applied to it, because an error occurring in the centre of a parish would be so magnified in extending towards the external boundary, and the discrepancy in the quantities or acreage would then be so great, as to be detected at once by the persons interested in the property. The acreable contents of fields are tolerably well known to the owners of property, and to labourers and others engaged in agricultural pursuits, and I believe that such persons could, by the eye, and by walking over the ground, estimate the quantity generally, to within ten, or possibly five per cent. of the truth; and Mr. Blamire, who, though not a practical surveyor, has a good general knowledge of the official details of mapping, and a vast and varied experience as a practical agriculturist, would, I believe, bear me out in this statement. I believe, therefore, that measurement of the quantities on the paper would afford a satisfactory test of the sufficiency of a plan for the purpose of registration, and the cost of it would be about two shillings per hundred acres.

572. As you have given the cost of computing the measurement by the hundred acres, what would be the cost of making a map by the hundred acres on the scale you have mentioned?—The cost of new surveys I have generally estimated at ninepence an acre for agricultural parishes; but Mr. Blamire has stated his opinion, in which I concur, that the price of labour has risen considerably in the market, and that the cost of such work should probably now be estimated at one shilling an acre instead of ninepence. That would, I conceive, be a liberal estimate for new surveys at the present time.

573. You think that maps could be made at the cost of one shilling an acre?—New maps could be made at the cost of one shilling an acre, but what I was attempting to explain was, that maps previously made might be tested by the admeasurement of the quantities only, at a cost of two shillings per hundred acres, to prove their sufficiency for the purposes of registration.

574. (*Mr. Wilson.*) Must not an addition to your one shilling an acre be made for every house?—Not in agricultural parishes, unless there be an unusual number of houses, in which case I have generally considered that it would be fair to allow for each house at the rate of an acre of land. I have found that, as a principle, to work fairly, and I would carry it also into the surveys of town properties.

575. Then town properties would cost, on an average, one shilling an acre?—The acreable charge for town surveys should probably be two shillings instead of one, with an addition of two shillings for every house, and that, I believe, would be found to work very fairly. I have considered this point attentively of late with reference to surveys of many towns made for the General Board of Health, and I believe it to be a very fair means of estimating the cost of the work.

576. With reference to an observation addressed to Mr. Blamire, Question No. 75, that "Col. Dawson in some evidence which he gave, stated that ordinary persons, not used to "maps, sometimes met with a good deal of difficulty in finding their properties in the "map," I would explain that it was in the evidence which I gave before Lord Langdale's commission in 1850, and my statement went to show the want of intelligence, and consequent inability of certain persons to deal with maps, and not the imperfection or insufficiency of the maps to supply the requisite information.

577. (*Mr. Walpole.*) You want intelligent officers in the office?—I will explain it in this way. The object of Lord Langdale's commission was, I believe, to make a map the sole index to the register, and it appeared to me, that the public generally are not sufficiently conversant with mapping to be able, when fields are nearly the same size, to point out upon a map, even of their own parish, the particular parcel of land to which they desire to refer. I have had frequent opportunities of observing this in the Tithe Office; they are, in fact, almost of daily occurrence, but still the documents are perfect and sufficient for every purpose; and when the owner of the property is named, the clerks in the Tithe Office are able at once to trace the property, and to point out every individual parcel of land belonging to it. The difficulty would be more clearly seen, if you were to take a map of a modern street, in which the houses are all built on the same ground plan, and of nearly the same size. If those houses are referred to, not by the regular series of numbers in the street, but by an irregular series of numbers made to run over the whole plan, I believe it would be

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impossible, or almost impossible, for the owner of any house to put his finger at once upon his own residence; he could only do it by knowing that his house was Number so-and-so in the street, and by counting the houses from the end of the street until he came to his own. I do not believe, therefore, that you can make the map your sole index to the register, and what I would suggest instead of it would be, that the index should apply to the owner's names, and be arranged in parishes; that under or against each owner's name in the register, should appear a description of every separate parcel of his land in that particular parish, with its acreage, the name of the occupier, and everything else which it is important to record; and that a specific reference number should be added to the description referring to a corresponding number marked within the limits of the representation of that parcel of land upon the parish map. Upon the map the reference numbers would be written to run consecutively throughout, and there should be attached to the map, and probably also to the parochial register, a consecutive list of those reference numbers, and against each number should be written the name of the owner, and the page of the register in which the property is recorded. You would then have, when an applicant brought in the name of the owner, or indicated upon the map the particular parcel of land he desired to deal with, a ready means of obtaining access to the register of the property, either by the name of the owner, or by the reference number of the land.

578. (*Mr. Cookson.*) You would have an index of lands referring to the names of the owners, and an index of owners referring to the numbers of the lands?—It will, I think, be indispensable to have both.

579. (*Mr. Walpole.*) A double index, and therefore a double facility of reference?—Yes. If you have only one it should be the names of the owners, for I am satisfied from my experience in the Tithe Office, that the public would not, without the ownership index, be able to point out on a map the lands they desired to refer to. Mr. Blamire has given evidence on the importance of registering by parishes, instead of by individual properties, and in that evidence I entirely concur. The boundaries of parishes are now well known and admitted, and we know generally the gross acreage of the parishes, so that if the register be by parishes, you will have no difficulty in accounting for the whole acreable contents of the parish, and you would discover and correct any overlaps or discrepancies that might occur, and which I am satisfied would frequently occur in registering by single properties, from persons claiming, through ignorance or carelessness, lands which did not properly belong to them; you would have innumerable overlaps of property to deal with, and only an expensive process for detecting and setting them right.

580. With regard to expense, you have given us the expense of rural districts at 1*s.* per acre, and the expense of town districts at 2*s.* per acre, with an additional 2*s.* for each house. Have you made a computation of the amount to which property must be taxed to meet that expense?—I would beg to refer to the evidence which I gave to the Society for Promoting the Amendment of the Law, in 1847; which evidence, after a very careful consideration of the subject, I still adhere to. The statement that I made at that time of the number of plans then completed, and the probable further number that would be received during the progress of the Tithe Commission, I may safely adopt now, and use that statement instead of the statement of the actual numbers of the present day. At that time it was estimated by me that the cost of surveying and mapping 29,000,000 of acres, including the whole of the rural districts, not uncultivated or unprofitable, at 9*d.* an acre, would amount to 1,087,500*l.*; to that was to be added, for 3,500,000 acres of uncultivated land, at 4½*d.* per acre, 65,625*l.*; and for 4.000,000 acres of unprofitable land, at 3*d.* an acre, 50,000*l.*; together amounting to 1,203,125*l.*, which would show the gross expense of mapping England and Wales, independently of the towns, at that time. From that sum it was then proposed to deduct for 17,500,000 acres already mapped at 9*d.* an acre, less 1½*d.* an acre for testing them, the object being to combine those parish maps into general maps of counties, and it was then thought desirable to measure lines across the parishes as a means of putting the maps accurately into their places. That, I conceive, would not be the object now, and I should not recommend it. I should recommend, in preference, the registering by parishes; and the cost of revising at the present time the statements as to ownership and acreage, where properties have been altered since the plans were made for tithe commutation, I assume to vary from 3*d.* to 6*d.* an acre. In some parishes, where there has been but little alteration, the expense might be consideraly less; but I think it better to take a full estimate, and to say that from 3*d.* to 6*d.* an acre would be the cost of revising those plans where any considerable alterations have taken place, or generally about one half of the original cost. Therefore I would deduct from the assumed value of the 17,500,000 acres of land mapped at that time for tithe commutation, one half, leaving 318,750*l.*; and I assumed that there would be 5,825,000 acres of other lands mapped for tithe commutation, which at the same rate of 4½*d.* would amount to 108,656*l.*; and taking the 5,675,000 acres of lands that would not be dealt with under the Tithe Act, at the amount before estimated, 109,477*l.*, the amount of the deduction to be made would be 536,883*l.*, which would leave the cost of the rural surveys 666,242*l.* The estimate for the town property was made on nearly the same principle as that now explained, and I should not think it necessary to alter that estimate, which was 206,475*l.* That would make together 872,717*l.*; and adding 10 per cent. for contingencies, the gross amount would be 959,988*l.*

581. A million of money, in round numbers?—Nearly a million, at the rate I then

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estimated, which was 9*d.* an acre; and allowing for the increased price of labour at 25 per cent., the total cost would be 1,199,985*l.* That I believe to be a liberal and adequate estimate, and I do not think I should be justified in proposing a much less amount.

582. (*Mr. Wilson.*) That would give us a map of the whole country?—Yes; a map of the whole country.

583. (*Mr. Walpole.*) That would leave open, of course, the question as to whether the boundaries between different properties were accurately ascertained or not?—No; that should give you a perfect map of the properties as they now exist.

584. Then it would include even the question of disputed boundaries; it would include, I mean, a person being sent down as a commissioner, or assistant commissioner, as was done in the Tithe Commission, in order to determine whether the boundaries on which the charges were to be apportioned were accurate or not?—No; it would not include that. The sum I have estimated would supply a perfect map of the properties as they now exist; but supposing objections to be taken to that map, it would be necessary to send some person to hear the objections, and to determine upon them.

585. A million and a quarter is the cost of surveying and making the accurate map; but the question as to whether the boundaries were accurate or not, in those cases where they were disputed, would have to be determined in some other way?—When they were disputed there would be the further investigation, and the expense of that further investigation to be borne.

586. (*Mr. Cookson.*) Disputes would arise in the case of open common field lands where there are no fences?—The sum I have estimated, I think, would be sufficient for the production of a map which should answer the purpose of registration, and which should provide a reference book of the lands, giving the name of the owner and occupier of every separate parcel. That would be from the best information which the person making the map could obtain on the ground. The ownership might afterwards possibly be disputed.

587. (*Mr. Walpole.*) It comes to this, that the expense of making scientifically a map of each parish throughout England and Wales would be what you say: the disputed questions of boundaries would have to be determined at an extra expense, in proportion of course to the number of those questions that might arise?—I should rather say the estimate I have given would be the cost of compiling a map of the entire kingdom, partly from maps scientifically constructed, and partly from the revision of other maps, adopted for registration, and used in the compilation of a general map.

588. And from what you know of maps in the Tithe Office, you are confident that this would give you such a map as might form the foundation of a registration of ownerships of property?—I am satisfied it would do so, and that it would provide a map fully sufficient for the purpose, until the Government maps now in progress of construction can be made to supersede them. It has recently been determined that the future maps of the Ordnance Survey shall be made on a scale which is equivalent to 25$\frac{1}{3}$ inches to the mile, and almost identical with the scale of our first-class maps, those maps being mostly drawn to the scale of 26$\frac{2}{3}$ inches to a mile.

589. What is the scale for making those Government maps now?—The scale has been 6 inches to a mile, but an order has issued from the Treasury that the maps henceforth made by the Ordnance Department shall be made on the scale of $\frac{1}{2500}$ of the linear measurement of the ground, equal to 25$\frac{1}{3}$ inches to a mile.

590. Are they making those maps now?—They have commenced making the plans on that scale, but the Government, previously to sanctioning the adoption of the large scale as a general measure, deem it right to ascertain by actual experiment the increased cost of such surveys and maps, in comparison with those drawn to the scale of six inches to a mile; and the Ordnance Survey department has been authorized to proceed on the large scale until a sufficient quantity of work has been prepared to show what will be the actual cost.

591. Do you know what counties they are working in now?—In Durham, I believe, and some of the counties in Scotland, Dumfriesshire, Ayrshire, and Linlithgow.

592. Have you any idea what time they calculate it will take to make a complete map of Great Britain on that scale?—That must depend on the funds voted by Parliament for the purpose.

593. I would assume that the Government puts the work actively in hand?—I am not prepared to say in what time it will be done; that must depend also upon the number of persons employed.

594. Would you take upon yourself to say what time it would take to make the maps that you are recommending for the Commission?—I should state first, with reference to the former question, that instructions have been given by the Government to the Ordnance Department to test the expense of the work, not only by their ordinary practice, but also by contracts with civil surveyors, the advantage of which to the present object would be, that any district of the country in which it was desired to carry out registration, could be undertaken by surveyors working by contract, without waiting for the completion of the work in the regular course of the Ordnance Survey.

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595. Now then, as to the second question, what time do you think it would take before maps according to your suggestion could be made for the purpose of registration?—I conceive that you would not desire to proceed with the entire kingdom at once?

596. That would have to be considered. Perhaps the better way of putting the question would be this: What time do you think it would take to make the whole, and what time do you think it would take to make a part; for instance, beginning with a county, and making maps of all the parishes in one county?—I think the whole might be done in about ten years, and a county in two, if a sufficient staff of surveyors, and funds, were provided for the purpose.

597. Now suppose we began with a plan of registration founded on maps, and we wished to commence with one county experimentally, and we will take either Middlesex or Lancashire, both being counties obviously of great importance, and containing great varieties of property, with suburban districts and rural districts: how soon could you commence in either of those two counties?—The Tithe Commissioners could supply you immediately with a list of the first-class maps in each county, and also a list of the other maps of the second class, which might be made available for the purpose, and the revision of those maps might be made, I should think, in about two or three years, according to the means provided.

598. (*Mr. Wilson.*) For the whole of those two counties, or only one?—For the whole of the two counties; but it would not be safe to apply that estimated rate of progress to the entire kingdom.

599. (*Mr. Walpole.*) I confine it to two counties?—If you took two counties only, you might possibly complete them in two years.

600. Supposing it was determined to begin a system of registration from county to county, we might be getting the maps in two years henceforward for each county?—Yes.

601. One might be completed at the end of two years; then we might start with the adjoining county, and have them both completed within three or four years?—Of course it would depend on the number of surveyors to be found for the purpose. A single parish would occupy perhaps about two or three months.

602. But still, at the expense which you have mentioned, you think that two counties might be completed in from two to three or four years?—I am satisfied as to the gross amount of expenditure; and seeing that the whole business of the Tithe Commission has been completed in eighteen years, I think that ten years should suffice, under proper management and means, for such a survey of the entire kingdom.

603. Supposing the maps were once completed, and a system of registration was in full operation, then, having regard to the alteration which takes place in property, how often do you think you would have to renew your maps for each parish?—I think if they were renewed about once in ten years, that would be often enough.

104. Would the expense of that renewal be considerable, or what do you suppose it would be for a parish?—As the registration proceeded, it would be required, of course, with every change of property, that a map representing the changes should be brought in, and that would diminish very much the subsequent operation of perfecting the map.

605. I will assume that the expense of the intermediate alterations of property borne by those parties who make the alterations of the property at the time of the sale, or the conveyance, still at the end of the period you would require to renew the map?—Those alterations would be carried into your new map.

606. Those alterations must be tested, I suppose?—Yes; those alterations would require to be tested on the ground; and I think that would cost from twopence to fourpence an acre for the districts in which alterations had been made.

607. About a third of the original expense?—Yes, or more nearly a fourth.

608. (*Mr. Wilson.*) I suppose it would not be absolutely necessary to renew the map so often as every ten years if expense were a great object?—No; the period would be optional, and it would depend also, I conceive, on the amount of alteration. I would draw a clear line of distinction between alterations merely of ownership, and those alterations which involve the subdivision of fields, because mere alterations of ownership would require no change in the map. It is the subdivision of the fields that requires alterations in the map, and only those.

609. (*Mr. Walpole.*) Would you require any renewal of the map, if you had once an accurate map to start with, and the different owners, on their own responsibility, altered the map at the time when any alteration in the property took place?—The renewal would be merely a matter of convenience. You would have the original map, with various supplemental maps; and instead of referring to the several supplemental maps, it would be a matter of convenience to have them all transferred to the original map, or to a clear copy of that map.

610. Then you would qualify your former answer, perhaps, that for the purpose of registration it would be necessary to renew the map in about ten years?—I should be glad to do so. I do not think it would be necessary to renew it from time to time, but that it would be a matter of convenience.

611. It is necessary to have a good map to start with, but not necessary to make, generally, new maps, particularly if the owners, on their own responsibility, make an

alteration in the map corresponding with the alteration relating to their property?—That is my view of the case.

612. (*Mr. Wilson.*) When you mentioned that it would take two years to make a map of Middlesex, would that include London, or would you put London separately?—No; my estimate had reference rather to the county, exclusive of London itself. London, as a town district, would be dealt with separately, and would occupy a large staff of surveyors probably from three to five years.

613. (*Mr. Cookson.*) And then there are such parishes as Marylebone, Paddington, and Saint Pancras?—I should consider the portions of those parishes built over as forming part of London.

614. (*Mr. Cookson.*) A new and accurate map of the whole Middlesex district would be very expensive?—Such a map of London is now in course of preparation. A skeleton map was made a few years back, by the Ordnance Department, on a scale of five feet to the mile, but showing only the lines of the streets and the river, and the frontages of the houses. That map was made for the Sewers Commissioners, but it was found to be on too small a scale for their operations, and they required also the details of the houses to be shown. They have determined, therefore, to enlarge the map, to double the size, and are proceeding with it in the different districts where sewerage works are in progress. They will eventually have a map on a scale of ten feet to the mile, but it will be a long time before that map is completed.

615. Would that be sufficiently large for the purpose of a minute and accurate description of boundaries in the metropolitan district?—I have not a doubt that the scale of ten feet to a mile would be sufficiently large for every practical purpose. There are very few cases in which maps are made on a larger scale than that.

616. (*Mr. Wilson.*) I suppose that a good many of the towns have been mapped?—Yes; many have been recently surveyed and mapped by the Board of Ordnance for the purposes of the Board of Health, and these are all drawn to the scale of ten feet to a mile.

617. Then all those maps would be sufficient for the purpose of registration?—Abundantly sufficient. They are very accurate maps, and satisfactory for every purpose. Many more such maps may be expected to be made for sanitary purposes. In the progress of the Ordnance Survey, all towns of 3,000 or 4,000 inhabitants, will be mapped on the scale of about ten feet to the mile.

618. They are continuing London on the old scale of five feet?—The block plan of London is completed on the five feet scale, and the Sewers Commissioners are filling in the detail on the ten feet scale, as they require it for their works.

619. (*Mr. Cookson.*) Do you not think that the expense of surveying the whole country would be materially increased by commencing a work of this kind on a large scale, so much surveying skill would be required, and there would be such an increased demand for skilled surveyors?—No, I should think the reverse, from my experience with the Tithe Commission. When I estimated the work originally at 9*d.* an acre, the estimate was objected to by the profession as being too low, but it was afterwards found that a great deal of work was undertaken at 6*d.* and 5*d.*, and even less than that, and the estimate of 9*d.* an acre was at last admitted to be a fair and liberal one, and I believe that in estimating now at 1*s.* an acre, I estimate very liberally. The common-field parishes to which you refer might cost 15*d.* or 18*d.* an acre, but there are others again that would probably be taken at 6*d.* or less.

620. I understood you to speak of the average expense?—1*s.* an acre over the entire country would, I am satisfied, be a liberal estimate.

621. (*Mr. Wilson.*) That is, 1*s.* in the country, and 2*s.* in the towns?—Yes; 2*s.* an acre in the towns, and 2*s.* a house. I will read what was reported upon my evidence with regard to towns, by the committee of the Society for Promoting the Amendment of the Law. "The cultivated land of England and Wales is, as we have said, estimated at "about 29,000,000 of acres. In this is included the sites of towns, the aggregate of which, "however, can scarcely be estimated with any certainty of an approach to accuracy. But, "as the metropolis, covering a surface of about 15,000 acres, contains nearly 2,000,000 of "inhabitants, it may be safely assumed that the whole town population of England and "Wales is located upon an aggregate extent of surface less than six times the area of the "metropolis, and therefore considerably less than 100,000 acres, which, for the present "purpose, would form no material deduction from the space assumed to be occupied by "the cultivated land, and may therefore be disregarded in an estimate of the cost of sur-"veying and mapping it. The survey and mapping of towns and populous districts on "the scale of one chain to the inch, would, according to one estimate, cost about 2*s.* for "the site of each house. Another estimate states the expense at about 1*s.* 7*d.* for each "house; both estimates rest upon high authority, and your committee are inclined to "adopt the highest, simply as the safest, and as involving least risk of objection. If we "assume, as before, that one half of the houses in England and Wales are within such "districts, their number would be 1,376,500 and the expense at 2*s.* each, 137,650*l.* If to "this we add the expense of surveying and mapping upon the same scale, as many more "divisions of property necessarily included with the sites of houses at 1*s.* each, amounting "to 68,825*l.*, the total expense of surveying and mapping the towns and populous districts "of England and Wales may be stated at 206,475*l.*" That was the estimate given by

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me in 1847, and the gross amount I should adhere to now, or it might be taken generally at 2*s.* an acre, and 2*s.* a house for the town areas.

622. (*Mr. Cookson.*) What was the scale you mentioned of first-class maps?—Three chains to an inch; but the Government scale is to be $\frac{1}{2500}$ of the linear measurement of the ground, the object being to assimilate the scale of our national surveys to those of the Continent, and to make it independent of any conventional unit. Compared with the present units, it is equivalent to 25$\frac{1}{3}$ inches to the mile, and very nearly the same as the scale of the first-class Tithe maps.

623. *Mr. Wilson.*) You have shown the expense of mapping the whole country to be something over a million of money, but is not one half of the country actually mapped at the present time?—I think you will find that I estimated the entire cost, and then deducted for the maps already made, about one half.

624. That is to say, that taking the part that is mapped, and the part that is not mapped together, the total cost amounts to 1,193,855*l.*; but suppose we were to work on the part that is mapped, the proportion of cost would be very small, would it not?—You must estimate the cost of the part already mapped at about 6*d.* an acre, or one half the price of new work, which would be the expense of the revision. All the work would require to be gone over, and the alterations that have been made on the ground since the date of those maps would require to be shown, and the references completed, to show the present ownership and occupation, and the present quantities of the lands. I estimate that revision at one half the original cost of the mapping, or about 6*d.* an acre for the district now required to be mapped.

625. Then supposing we were able to commence a registration of title in that portion of the country which is already mapped, are we to conclude that the expense of completing a map for that purpose would not exceed 6*d.* an acre in country parishes?—For 6*d.* an acre you should be furnished with an accurate map, representing the properties as they exist at the present time.

626. And I believe I am right in saying that more than half the country is possessed of such maps as you are speaking of?—Yes; and for about one-sixth of the country we have first-class maps.

627. (*Mr. Walpole.*) Are those first-class maps dotted over different parts of the country, or in particular counties?—They are dotted all over the country. This is one of the Ordnance sheets of the county of Kent (*showing it*), in which the first-class maps are coloured pink, and the second-class maps green; the red lines show the boundaries of the parishes.

628. But we should have to mark besides that, the boundaries of properties?—Yes; this is merely an index map of parishes.

629. Have you estimated in the expense, the division of property, as well as the division of parishes?—Oh, surely. This map shows merely what proportion of the county has been actually mapped. There are maps in the Tithe Office of the whole coloured area. The districts coloured pink are first-class maps, being a very large proportion of the whole; the others are second-class maps, but many of those second-class maps would be found, I believe, sufficient for the purposes of registration.

630. At all events, they would be of great assistance in a new survey?—You might complete those second-class maps at half the original cost, or say, about 6*d.* an acre; and the first-class maps would cost likewise about 6*d.* an acre to complete them to the present time. The whole coloured area might be completed for the purpose of registration at the expense of about 6*d.* an acre. Here is a small diagram (*producing it*) that shows generally what parts of England and Wales have been mapped, from the south coast to the Humber. It is coloured to represent the districts of which there are maps in the Tithe Office. The white spaces are not mapped. There are some districts in which comparatively little has been done. For the purpose of registration, I should advise having the maps made in portfolios or cases, rather than on rollers. They would be found much more convenient for reference, and be less liable to injury. When on rollers they are frequently broken and torn.

631. (*Mr. Cookson.*) Do those lines show any division and subdivision?—These are the fence lines of the fields (*pointing them out*).

632. (*Mr. Walpole.*) What are the blue lines?—Ditches and drains.

633. None of the maps show to whom the boundaries belong?—It is sometimes, but not always, done on the Tithe plans. In property plans it is done, and it should be done for the purpose of registration. It is generally done by a sign thus ——x—— to show to which property the fence belongs.

634. (*Mr. Cookson.*) Would it not considerably increase the expense, to ascertain to whom the fence belongs?—It would increase the expense, but not very much.

635. (*Mr. Walpole.*) You could not satisfactorily ascertain that by means of the person who made the survey, because it might involve legal questions?—It might be open, of course, to dispute afterwards.

636. Would it not be much better that the map should be deposited merely as a general indication of what the property is, without challenging the boundary?—It was suggested, I believe, by Mr. Blamire, that after preparing such a tracing as you have been supplied with, the course should be, to send it to the surveyor, whose business it would be

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to go over the ground and mark the subdivisions of fields which have occurred since the plan was first made, and to compute the acreage of each such new subdivision, and make the requisite alterations in the book of reference. This is a copy of the Tithe apportionment of the rentcharge in the parish of Appledore (*producing it*), in which you have in the first column the names of the landowners, in the second column the names of the occupiers, in the third the numbers referring to the plan, in the fourth the name and description of the land, in the fifth the cultivation, and in the sixth the acreage. Then comes a statement of the tithe rent-charge upon each field. Any number on the plan refers at once to the full description of these particulars in the apportionment or reference book.

637. (*Mr. Walpole.*) But for registration of title, you would only want the names of landowners and occupiers, the description of the land, the quantity in statute measure, and the number referring to the plan. You would require five columns?—And the description of the field as to cultivation?

638. No; you would not require the cultivation. You would want five columns: first, the name of the owner; second, the name of the occupier; third, the number referring to the plan; fourth, the description of the premises; and fifth, the quantity in statute measure? —Then in the event of any alteration, you would supply a copy of this book of reference, and a tracing of the map to a surveyor, whose business it would be to note all the alterations that had taken place, and you would then deposit it for inspection in the parish, and deal with the objections which might be offered to it, after which a perfect map should be made for the purposes of the registry. Here is another plan (*producing it*) of part of the Parish of Kensington, showing the state in which the lands were at the time of the Commutation of the Tithes. Subsequently an alteration took place in the parcels of land 40, 41, and 63, which were set out for building purposes, and the rentcharge originally apportioned on those lands was required to be subdivided. Here is another plan showing the altered state of the parcels under those circumstances.

639. (*Mr. Wilson.*) Still referring to the same numbers?—Yes. The original number, 40, extends to this dotted line, and every new parcel of land which forms part of the original number has the number 40, with the addition of a letter as 40A, 40B, 40C, and so on. The same with numbers 41 and 63.

640. (*Mr. Walpole.*) You keep the original division and make subdivisions?—Yes; and under the description of the property there are descriptions of all the different subdivisions. This is a very extreme case of town property. Those other two parcels of land, 50 and 51, were altered and laid out in a similar way, and this is the document which shows the alterations (*producing it*). This shows how practicable it is to deal with the subdivisions. The original rentcharge is now distributed over the several subdivisions by the altered instrument of apportionment.

641. (*Mr. Cookson.*) The expense of that subdivision would be considerable?—The expense in this particular case would be considerable, but it is not generally so.

642. (*Mr. Walpole.*) But that would be at the expense of the different owners of the property when they chose to subdivide it for building or other purposes?—Certainly.

643. (*Mr. Wilson.*) There is one point about the expense which I should like to get clearly out. Did I not understand you, that taking the first-class maps, and those of the second-class maps which would be available, you have maps at the Tithe Office applying to at least half the country, or about half?—I should say considerably more than half.

644. Take it for the present purpose that you have maps equal to half the country?— We have 12,400 maps at present, and 2,333 of them are first-class maps. Two thirds of the remainder, say, 6,712, would, I think, be sufficient for identifying the lands represented by them.

645. (*Mr. Walpole.*) That is 9,000 out of the 12,000 in round numbers?—Yes.

646. (*Mr. Wilson.*) What proportion of the country would that be?—Taking 2,500 acres as the average acreage of a parish, they would represent 22,612,000 acres.

647. That is nearly the whole country?—The whole country is 37,324,915 acres.

648. Then you consider that we could have maps available for the registration of title of at least twenty millions of acres by paying 6*d.* an acre?—Yes, I feel confident of that.

649. Leaving the towns out of consideration, which would cost something more?—Yes, I speak confidently on that point; that you would certainly have maps of twenty millions of acres.

650. (*Mr. Cookson.*) But there is no county of the whole of which you have maps of that description? you have maps of portions of each county?—The whole of Cornwall has been mapped, and nearly the whole of the counties of Norfolk, Suffolk, and Essex, together with Kent and the other counties south of the Thames, and the greater portion of Wales; you will see by the small diagram that nearly the whole is mapped.

651. That is entirely mapped by first and second class maps?—Yes; but it is not so generally, because in the Tithe Office there are only maps of the parishes in which tithes were to be commuted. You would find in many of the other parishes, I have no doubt, maps made either for parochial assessment or for private purposes, which would be equally available for your purpose. In the small diagram, the uncoloured spaces mostly represent the parishes previously dealt with under the General Inclosure Acts, the tithes of which were settled under the Inclosure.

Lieut.-Colonel Dawson.

12th Sept. 1854.

652. But maps must exist as to those?—Yes; maps will be found in the counties of most of those parishes.

653. The Inclosure Acts do not subdivide the old enclosed portions of the parish where they belong to the same owner? Suppose, for instance, an owner of 3,000 or 4,000 acres of land lying altogether, they do not subdivide that for enclosure?—Nor would you of necessity for the purpose of registration.

654. But there is to be every boundary fence marked out?—It would certainly be desirable to do that, although not always necessary.

655. (*Mr. Wilson.*) Could you leave with us that little red map?—Certainly.

656. (*Mr. Cookson.*) Many of those enclosures took place a great many years ago, and the maps, perhaps, would not be of the best description?—They are all scientific and accurately constructed maps, and the copies of them that are now forthcoming would admit of being revised and completed to the present time, at the rate I have spoken of.

657. (*Mr. Wilson.*) What does this map show (*the red map*), the parishes mapped under the Ordnance Survey or under the Tithe Commission?—Under the Tithe Commission. The coloured area is that of which there are maps existing in the Tithe Office.

[The witness withdrew.]

Appendix, Part E.

Written Questions circulated in England and Ireland by the Commissioners, and Answers thereto.

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Questions circulated among Members of the Profession, and certain other Persons, in England and Ireland.

Questions.

QUESTIONS.

1. Do you consider that the sale and transfer of land is impeded or rendered more expensive than it ought to be, by the necessity which now exists for the retrospective investigation of the title on the occasion of each successive transfer?

2. Is it your opinion that the disposition of land is impeded or rendered insecure by reason of the want of a registry of the title to the land, or of the assurances deducing the title?

3. Would the sale and transfer of land be facilitated by establishing a public register or record of the title to land?

4. If so, would such increased facility of sale and transfer be obtained by avoiding the investigation of the past title, or by diminishing the expense of transfer, or by making the buyer more safe and secure, or in each of these ways? or in what other way would the register assist the sale and transfer?

5. If you think the expense would be diminished, would it be a saving to the buyer only, or to both seller and buyer?

6. What proportion of the expense of a purchase of land may, upon an average, be taken to arise from the investigation of and inquiries into the title, and matters connected therewith?

7. Do you think that it is practicable to form a registry of title, as distinguished from a register of the various deeds and assurances under which the title has been derived?

8. Might a register of title be instrumental in simplifying generally the title to land, and the forms of conveyance? and how?

9. If a register of title were established, what forms of ownership or property, besides the fee, should, in your opinion, be put upon the register?

10. Would it be essential to the purposes in view, to adopt the principle of exhibiting only the present actual and existing title, without the history or past deduction of it? and might a retrospective inquiry into the former dealings and transactions be in this way avoided?

11. If the register should disclose the deduction and history of the title, would it in any, and what respects differ from a registry of Assurances?

12. Would it be necessary or desirable, as part of such a system, to provide that all forms of ownership, except those admissible to the register, should be of the nature of trusts only?

13. Would it be necessary or desirable, as part of such a system, to provide that equitable interests and trusts should not, except when specially protected on the register, bind or affect the title of the registered owner?

14. Would it be necessary or desirable that equities and trusts, except when protected on the register, should become personal confidences merely, enforceable personally against the registered owner, but not conferring any right as against the land itself?

15. Might trust and equities, intended to affect the registered owner, be protected on the register, consistently with the other objects above mentioned, so as to prevent the registered owner from transferring the land while such protection should exist, or from transferring it otherwise than subject to the protected interest?

16. Could the existing system of settlements, by which the limitations and trusts of the settlement modify and become part of the title, be continued consistently with the principle of a simple register of title, or with the above-mentioned objects proposed in the registry; if so, in what manner?

17. Do you think that settlements, trust, and equities would be adequately protected by allowing the parties interested under them, or others, to put a distringas, caveat, or stop upon the register, or to take some other proceeding in the registry office of a similar nature?

18. Should this distringas, caveat, or stop necessarily have the effect of altogether preventing a transfer while uncancelled? or might the transfer be permitted to take place subject to the interest protected by the distringas, caveat, or stop?

Questions.

19. In the class of interests allowed to be protected by distringas, &c., could any and what distiction be made between those which should prevent a transfer, and those which should not so operate?

20. Should all equitable interests, &c. be allowed to be protected by distringas, &c.; or should the right of obtaining that protection be attached to only some and what equitable interests, &c.?

21. Should the register define or describe the interest of the person putting on the distringas, &c., or should it state (as in the case of a distringas upon stock) only the name and address of such person?

22. How should the benefit of the distringas, &c. be secured to persons afterwards acquiring, by sale or otherwise, the interest protected by the distringas, &c.?

23. What should be the authority or evidence required to entitle a person to put a distringas, &c. on the register?

24. Can you suggest any other mode than the distringas, &c. of protecting equitable interests and trusts against the improper alienation of land by the registered owner?

25. Do you consider the instances of mis-appropriation or mis-dealing by trustees of stock or money, involving loss to their beneficiaries, frequent or numerous?

26. Having regard to such cases, and to the effect of the powers of sale now usually inserted in settlements and mortgages, is it, in your opinion, objectionable, as part of a system of registration of title, to vest the registered ownership, both legal and equitable, of settled land in trustees, subject only to the liberty given to beneficiaries of protecting themselves by distringas, &c.?

27. Does it appear to you that the security of settlements or trusts would be unduly impaired by their ceasing to bind the title and follow the land (as at present), and depending for their efficacy, as against the land, upon acts and forms external to the settlement, such as are above suggested?

28. Would it be necessary, for the purpose of ensuring accuracy in the registered title, and for the security of purchasers, to couple the registry with a public map?

29. Would it be indispensable to the registry of the title that the Registrar should ascertain the accuracy of the description and the identity of the land?

30. In your view, would it be necessary to invest the Chief Registrar with judicial uthority for any and what purposes in connexion with the registration of title?

31. Should the registration be voluntary or compulsory?

32. Should the registration confer at the outset a warranted or parliamentary title? If so, how should claimants and the nature of their rights be ascertained? Or,—

33. Would it be sufficient if the provisions of the registry related only to the title subsequent to its commencement, leaving the antecedent title to be still (as now) the subject of investigation, until by lapse of time or otherwise that should become unnecessary?

SUPPLEMENTAL QUESTIONS.

34. Do you consider that Ireland, by reason of its existing Registry of Deeds, its complete Ordnance Survey and uniform Public Valuation, or the machinery of its Incumbered Estates Act, possesses any and what advantages for the introduction of some permanent system to facilitate the sale and transfer of land?

35. Have you considered any plan of transferable Debentures or Certificates charged upon land, in connexion with the subject of facilitating transfers, by a system for the registration of ownership or title? Mention your views in regard to such Land Debentures, and whether you would anticipate any and what benefit therefrom; and any examples of Land Debentures having been in successful operation, or proposed for general adoption, either in these countries or abroad?

36. State shortly any special information respecting the Ordnance Maps of Ireland; their advantages or imperfections; their scales for the rural districts, and for towns; the uses to which they have been applied, and particularly their use in dealings relating to Irish land; also their total cost, and the period occupied in their preparation?

ANSWERS TO THE QUESTIONS.

Mr. T. P. Keene.

Mr. THOS. PACEY KEENE, Barrister (*Conveyancer*).—*7th October* 1854.

1. THEY seem to be both impeded and rendered more expensive than they ought to be.

2. Not by the want of any registry of assurances; and the success of a registry of title simply, in the present state of titles, would depend on the form adopted, and the mode in which it was begun and proposed to be carried out.

3. This also depends on the principle and practical detail of the system. If such a system can be initiated and carried out so as to operate immediately and unimpeachably, and so as to comprehend all existing as well as all future titles, it must be beneficial if rendered inexpensive.

4. If an unimpeachable registered ownership could be acquired, great facilitation and probably increase of land dealings would ensue, not only through relief from retro-

Mr. T. P. Keene.

spective investigation, diminished expense, and absolute security, but also from divesting them of technicality, and rendering them more generally intelligible.

5. The expense should be restricted to a low fixed per-centage, and then both buyers and sellers would equally be benefited.

6. This so much depends on the individual title itself, and the caution or captiousness of those to whom it may happen to be submitted, that it would seem scarcely possible to arrive at anything like a rule on the subject.

7. Yes.

8 If mere registration be rendered sole and unimpeachable evidence of seisin in fee, it is hardly possible to conceive anything more simple than a title unencumbered with any trusts would then be, and so far as concerned the subject of registration in all cases it would appear that a conveyance by deed might be dispensed with, at all events recitals and covenants would be unnecessary.

9. None.

10. The excellence of any such system should be its capability of instantly affording unimpeachable evidence of absolute ownership purely and simply, without any retrospection.

11. This, like that, would probably be worse than nugatory.

12 and 13. It would appear to be both necessary and desirable.

14. A great commercial boon would be conferred on the land-owning interest by relieving the land from the defalcations of its trust-owners, and allowing the responsibilities and penalties of such to rest, as in natural justice, on the delinquents only.

15. Yes.

16. Yes; for if (as probably would be found expedient) the registration be of the legal fee simple ownership only, all the limitations and trusts in settlements would then be on an equal footing, and though capable of being effectually protected on the register, would not otherwise form any part of the title; but it does not appear how the present system of settling real property would be further interfered with.

17. Yes.

18. The obvious and apparently only necessary effect of distringas would be to put any proposed purchaser on enquiry, leaving it to his option to complete his purchase subject to the interests protected, of which he would thereby have notice.

19. To create any distinction in this respect would trench on the simplicity of the system, and probably with no compensatory advantage; for if alienation is to be so far interfered with at all, it should be in favour of unborn persons, which is impossible, seeing that they are not in esse to take the means for their own protection; but if it were otherwise, the integrity of the principle of the system should not be abandoned.

20. Yes, all; but it would appear desirable that facility should be given for the extension of the protection of a single distringas to any number of interests.

21. The simplest entry would be the most eligible, whether it be that of the name and address of such person, if one only, or if many claiming under one document, by a combined distringas it might be restricted to the description of such document merely.

22. By making the distringas run with the land as well as to the interests protected, as to the registered estate out of which it is derivable.

23. This is a somewhat difficult question, but it would appear well that a distringas should be entered, on the order of any judge of any court of judicature in the realm, or upon the production before the registrar of the document creating the interest, or an attested copy of such document or of so much of it as related to the matter in question, or upon the affidavit of the claimant or his or her attorney, solicitor, husband, guardian, or committee.

24. No.

25. No.

26. No.

27. No.

28. This would appear to be absolutely necessary.

29. It would be necessary that at the outset the greatest precaution should be exercised in this respect, although absolute certainty would not seem indispensable, if the registrar be clothed with final jurisdiction in case of error,

30. Seeing that the successful working of the system would mainly depend on the completeness of its administrating power, it would appear desirable that its presiding officer should have absolute and final jurisdiction in all matters and questions relating to the grant, cancellation, extent, and subsistence of distringas, and in all disputes (after the ownership is once registered) arising from errors of registration, that is to say, intrinsic errors of whatever nature.

31. Compulsory.

32. (a.) Yes.

32. (b.) By the present machinery of the Court of Chancery.

32 and 33. These questions suggest the grand difficulty—the initiation of such a system under existing circumstances is the one thing to be accomplished. To attempt to start on any new system without first being disencumbered of the old, would be but to aggravate our present burthen of toil and perplexity—for what absolute efficacy could any registration have for generations to come, if the first entry be still to rest on the

anterior title as heretofore, until time has barred it? And although all subsequent registrations, so far as they depend on each other, might, inter se, be unimpeachable, they would nevertheless during this whole protracted period be constantly liable to alteration, or to be altogether swept off the record from a flaw in their common basis; this alone is sufficient to demonstrate that if the system is adopted, it must spring from an indefeasible root, and this can alone be secured by first exhausting and investigating all existing titles out to their present respective legal fee simple ownerships, which, when deduced, might be rendered indefeasible by certificate or otherwise, and then would form a fitting subject of primary registration, all other estates and interests whatsoever (if any) being then thrown under the new system, and deemed trusts accordingly. And it is submitted to the Commissioners whether it be not worthy of consideration *that this preparatory step of investigation, deduction, and certification should first be taken and completed* to pioneer the way for whatever system of registration may be ultimately adopted. *Mr. T. P. Keene.*

THOS. PACEY KEENE,
13, Furnival's Inn, October 7, 1854.

MR. JOHN BULLAR, Barrister (*Conveyancer*).—10*th October* 1854. *Mr. J. Bullar*

1. I CONSIDER that it is both impeded and rendered more expensive than it need be. "Ought" involves many points.
2. It is my opinion that the disposition is impeded by want of a registry of the title. I am not so sure about the insecurity.
3. Yes, if it were a good register. No, if it were a bad register.
4. Yes; by each of these ways if the register were well devised.
5. To both.
6. I cannot say what the proportion would be if an average could be taken. I doubt not that in many cases the proportion exceeds 75 per cent.
7. Yes.
8. Yes. See my evidence before Mr. Solicitor's committee.
9. Ditto.
10. Yes.
11. I take it that it would differ mainly in giving the effect instead of the words of assurances.
12. See my evidence.
13. Ditto.
14. Ditto.
15. Ditto.
16. Ditto.
17. Ditto.
18. Ditto.
19. The distinction could be made by entries under two heads instead of under one.
20. See my evidence.
21. Ditto.
22. By enacting that the distringas should enure for the benefit of assigns.
23. See my evidence.
24. Ditto.
25. Neither frequent nor numerous, considering the number of trusteeships.
26. See my evidence. I do not see any need to vest the equitable ownership in trustees. Vest in them the legal ownership, and in their grantees the legal and equitable.
27. No.
28. Not necessary.
29. No.
30. See my evidence.
31. Ditto.
32. Ditto.
33. Ditto.

I have answered these questions only so far as they seemed to me (trusting to my memory) to go beyond the evidence that I have given on the matter.

JOHN BULLAR,
Basset Wood,
October 10, 1854.

MR. EDWARD WEBSTER, Barrister (*Equity Draftsman, &c.*).—14*th October* 1854. *Mr. Ed. Webster.*

1. I DO. It is both impeded and rendered more expensive.
2. The disposition of land is rendered insecure and impeded by want of a registry confined to "Owners of absolute fee simple estates in land."
3. A record of the title would afford no facility unless the record be confined to a title to "absolute fee simple estates," of which there should be a registry, not public, but established upon the principle of the books of the Governor and Company of the Bank of England, which show the registered proprietors of stock in the public funds.
4. The registry I have referred to in my answer to the last question would ultimately, and not at a remote period, give the land owner the same advantages as the fund-holder.

Mr. Ed. Webster.

5. To both.

6. I do not think an average can be ascertained. I have some remarkable examples, (viz.,) cases that have occurred in practice.

7. I do; the word title being construed to mean "an absolute fee simple estate," and no other estate being allowed to appear upon the registry. The name and address of the proprietor for the time being of such registered estate would of course be registered, and he would be the person to transfer the estate to a purchaser.

8. The registered proprietors of the absolute fee simple should have in his possession an official certificate showing his title. No transfer should be made on the registry without the production and delivery up of such certificate. This would afford great security.

9. None whatever, except mortgages and building leases. There would be a new and easy mode of effecting a mortgage, (viz.,) by an official certificate, and each mortgage would be registered. The certificate would be transferable from hand to hand, like a bank note; but the mortgagor might stipulate that the interest should be payable to the account of the holder of the certificate at any bank or otherwise as might be agreed upon. The mortgage so made should confer on the mortgagee a power of sale, (either with or without notice as might be agreed,) and a right to foreclose and to have a transfer of the fee simple, which, until such transfer were made, would remain in the registered proprietor subject to the mortgage, and would be transferable subject to it. An intended mortgage, might, however, stipulate to become the registered proprietor, executing a declaration of trust, (vide answer to question 16,) in which case the mortgage would not appear on the registry.

10. A retrospective inquiry would not be necessary before registering "the fee simple proprietor" before referred to, because the purchaser must for his own security ascertain that the first registered proprietor is entitled to the fee simple. Any person producing the deed conveying to him the fee simple, should be entitled to be registered. This would prove nothing; but ever afterwards the fee simple would be transferable on the registry and on it alone. It would however be highly beneficial, especially to persons interested in settled estates, for parties to be at liberty to place on the registry, with the sanction of the chief officer, the names of persons (for example, trustees of a settlement,) not absolutely entitled to the fee simple, yet who, for the purpose of transferring the absolute fee simple and that only, with his consent and by his order, to purchasers, should be deemed "The registered proprietors." A preliminary investigation of the title would in such case be necessary, and the chief officer, for the purpose of deciding whether any outstanding estate less than a fee should be merged in the fee simple, or whether any outstanding dry legal estate should be vested in the proposed registered proprietors either before or after registration, or whether any right, title, or equity should be got in and conveyed to such proprietors, or whether a purchaser should be entitled to any other title than that so registered, should have subordinate judicial and vesting power given to him.

11. A registry of "Absolute Fee Simples Estates" would not disclose the deduction and history of the title.

12. Yes, except only building leases and mortgages.

13. Yes.

14. They should confer the same right against the lands as an equitable title to stock in the public funds confers against stock.

15. Unquestionably.

16. The registered proprietor might execute a declaration of trust containing the limitations. The declaration should not appear in the registry, but any party interested (e. g., the tenant for life,) should be at liberty to place a distringas on the registry.

17. I do.

18. It should altogether prevent a transfer while uncancelled.

19. I do not include mortgages or building leases in this class of interests. Every class, except mortgagees and lessees under building leases and farm leases, should be entitled to prevent a transfer, but there would be no difficulty in having a transfer made subject to any life estate, or other estate by an order of court; the order being noted, not in terms, but simply its existence referred to on the registry, which order, until discharged, should operate to prevent a transfer to a purchaser of the fee simple.

20. All should have this advantage, even equities created by parol.

21. Only the name and address, and a short note, (e. g. "transfer restrained,") should, together with the date of the entry, be put on the register.

22. In the same manner as all other rights are protected. It is impossible to have a register of all the various estates, interests, and equities, created by the acts of parties.

23. An affidavit.

24. No.

25. This depends on the personal experience of each individual. Stock in the names of respectable trustees is considered practically as secure as land.

26. I consider it perfectly free from objection. It is only in accord with the principle which by common law gives absolute power of sale to an executor over leaseholds, as against creditors and legatees before suit.

27. The plan I propose would effectually prevent any such objection. There would be a Registrar General of land, who would have duties analagous to those of "the Bank of England," with regard to distringases on stock, and would be subject, like the Accountant General of the Court of Chancery, to orders of court.

28. I consider a public map quite unnecessary. A schedule of parcels by their names and acreage would be sufficient. *Mr. Ed. Webster.*

29. No.

30. Vide answer to question 10.

31. Voluntary only, at least at first.

32 and 33. The title as from the time when the name of "The registered proprietors in fee simple" was inserted on the registry, would be a succession of transfers of fee simple estates only. The purchaser, *as from that time*, would have to ascertain simply that his vendor, and his vendor only, is the registered proprietor. The production of the certificate (vide answer to question 8) would be primâ facie evidence, and if the Registrar General found the registry free from distringases or stop orders, he would make the transfer, and deliver to the purchaser a new certificate.

I have, &c.,
EDWARD WEBSTER.

MR. JOHN EDWARD DIBB (*Deputy Registrar of Deeds, West Riding*).—17*th October* 1854. *Mr. J. E. Dibb.*

1. I DO.

2. It is.

3. It would be so.

4. Increased facility would be obtained by avoiding the investigation of the past title; for as the labour of such investigation would be saved so also would be the expense, which would proportionately increase the value of the estate. The buyer also would be rendered more secure, because it would so materially limit the period within which questions might arise to cause litigation.

5. Both to seller and buyer. The seller, by enabling him to offer a clearer title; the buyer, by expediting the transaction and clearing him of risk.

6. I am not competent to answer this question of my own knowledge.

7. I do.

8. A mere registry of title, unless the investigation of its past history were avoided, would only be a partial benefit. A registry of all documents affecting the title, unregistered documents being rendered invalid, would be a considerable advantage. But the greatest simplification would be in a registry of title, avoiding all re-investigation; for then in most cases a certificate of transfer in a very simple form, by the registrar, might take the place of a conveyance.

9. The registry should be compendious and complete. It would be as easy to put every form of title on the register as that of the fee only, provided a good system of indexes were laid down. It is in their construction alone that any real difficulties could arise; but such difficulties are, I think, far more theoretical than real.

10. In commencing the register, though not essential, it might be useful and satisfactory that the history or deduction of each title should appear; and by a very simple system of references such history might easily be perpetuated; the result of which would be that having by means of the index found any one of the links in the chain of the history of the title, it would be easy to trace it backward or forward throughout its whole extent.

11. The difference is publicity or privacy. A register which discloses the deduction of the title furnishes security with entire publicity. A register of assurances,—taking that to mean a register by memorial as at present practised in Yorkshire,—is perfect security against suppressed deeds, with an entire absence of exposure of private affairs.

12. It would not be necessary for the simple purpose of registry that there should be any extension of the system of trusts; but, as I have replied to question 9, every species of ownership could be readily registered.

13. No registry could be considered complete if real estate could be affected in any way than by a registered document: therefore equitable interests and trusts should not bind or affect the title of the registered owner, except when specially protected on the register.

14. I think so.

15. I think this might be readily done.

16. I do not see that the existing system of settlements need be interfered with; for when a title or a new settlement is put upon the register, it would be quite practicable to state (in a tabular form) all the limitations and trusts, and to continue their history, up to their extinction, upon the register.

17. In the majority of cases no distringas or caveat would be required; for in any subsequent transaction it would be necessary for the vendor either to show that the various limitations and trusts were discharged, and how, or else he would only be able to sell subject to the already registered limitations and trusts.

18. Where a distringas or caveat became necessary and was registered, it need not prevent, but only affect, the sale, according to the interest so protected.

19. I do not at present see the necessity of any such distinction.

20. I think all equitable interests ought to be allowed to appear on the register. Registry should be essential to the existence of any interest. Short of that the register would mislead.

21. Upon a register of title, the interest of the person putting on the distringas should be defined or described. Upon a register of assurances (*i.e.* by memorial) such definition might be dispensed with.

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22. This would depend upon the mode by which such interest was acquired. If by assignment, such assignment should be registered.

23. A distringas might be executed by any person claiming a right to do so, the nature of his claim being fully stated in such document; and in case any person so put any distringas upon the register fraudulently, he should be liable to some civil or criminal proceeding, as may appear most advisable; and the finding of any jury or the judgment of any court be registered in order to nullify such distringas.

24. The answer I have given to questions 16 and 17 apply here; but where the limitations or incumbrances are not stated on the register in the way there suggested, then the registry of a distringas or caveat would probably be the very best mode of protecting all other equitable interests and trusts.

25. I cannot answer the question of my own knowledge.

26. Such a plan might prove unobjectionable when accompanied by the security of a registry.

27. I fear that settlements and trusts would be unduly impaired if they cease to bind the title. But a good registry would only bind them all the more securely, and furnish to future purchasers clearer evidence of their nature and extent.

28. I do not think a public map absolutely essential to an efficient registry. The ordnance maps are sufficient for all ordinary cases. And indeed among the thousands of searches which I have personally made, I have rarely found it needful to refer to any map or plan whatever. There are, however, exceptions; and wherever a map or plan forms part of a deed, an authenticated duplicate of it should be deposited in the registry.

29. I think the responsibility of ascertaining the accuracy of the description, and the identity of the land, should wholly rest, as at present, with the contracting parties.

30. I think the office of registrar should be purely ministerial.

31. I think it should be compulsory to register every transaction within a given period.

32 and 33. I should prefer the option which the second of these questions suggests.

I have, &c.,

(Signed) JOHN EDWARD DIBB,
Deputy Registrar of Deeds, &c., for the
West Riding of Yorkshire.

Mr. J. Williams.

MR. JOSHUA WILLIAMS, Barrister (*Conveyancer, &c.*).—20*th October* 1854.

1. I DO not consider that any absolute necessity now exists for the retrospective investigation of the title to land on the occasion of each successive transfer. Theoretically, no doubt every purchaser and mortgagee has a right to an abstract of the title for the last 60 years, and to have that abstract verified by proper proof. And in the case of mortgages the right is frequently insisted on, whereby expense is incurred, often very great and sometimes oppressive; and by the liability to such expense I consider that the mortgage of land is impeded. But with regard to sales the practice has materially altered within the last 20 years. It is now common in sales both by public auction and by private contract to insert conditions restricting the purchasers rights, both as regards the length of title to be investigated, and also as regards the proof to be required, such as making recitals in deeds 20 years old or upwards conclusive evidence of the facts recited. I have been informed by two of the leading auctioneers in London, and the information quite accords with my own experience, and with what I have continually heard from other quarters, that such special conditions do not materially impede the sale of land. I have in fact known land to sell for a large price when the practical effect of the conditions of sale was to make the title depend solely on the vendor's own declaration of his quiet enjoyment for forty years. In the case of leaseholds, the theoretical right to a sixty years' title is almost always excluded by a condition that the landlord's title shall not be required; and such a condition, strange as it may appear, rarely affects the price. There being, then, in the majority of cases no strict investigation and proof of the whole title, I can reply to the first question so far only as regards the investigation of title as it ordinarily occurs. Whether the expense of this investigation is greater than it ought to be, is a question that scarcely admits of an answer, for want of some definite standard of what the expense ought to be, with which the present expense might be compared. The expense is often great and always uncertain, the expense of one purchase seldom affording a criterion of that of another. I consider it to be highly desirable that the expense of the investigation of title, like that of every other transaction, should be as small as possible. But I do not think that the expense of investigating the title to land now affords any material impediment to its sale. Land, in respect to its sale, is differently circumstanced from most other commodities. There is a large quantity of land in this country which has not been sold for generations, and the sale of which the proprietors would consider to be the greatest hardship that could happen to them. Those who buy land almost always buy with a view to hold it, except in the case of building ground, which is usually sold under special conditions. I think that the desire to retain lands in a family is so strong in this country, that if the expenses of sale were diminished almost to nothing, the number of sales would not be greatly increased. Generally speaking, those only sell whose necessities oblige

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them; and I do not think it would be fair to those who hold their lands, to diminish their power or security, for the sake of saving expense to such as are obliged to sell.

2. In answer to the question whether the disposition of land is impeded by reason of the want of a registry of the assurances deducing the title, my opinion is that the registries which at present exist rather impede than facilitate the disposition of land. Whether any registry which might be hereafter established would impede or not the disposition of land must depend on the nature of the registry; but I confess that I doubt very much whether any registry could be established which would facilitate the disposition of land, without most extensive changes being at the same time made in the law of real property. And in that case I think that the benefit to be derived would result more from the change in the law than from the establishment of the registry; but with such changes a registry might possibly be beneficial.

With regard to the security of the disposition of land, I presume that a registry would afford a nearer approach to mathematical certainty of title than can now be obtained. But I do not think that the title to lands generally can with propriety be said to be insecure under the present system. The case of a bonâ fide purchaser being evicted for want of title is exceedingly rare. And the fact which I have mentioned above, that special conditions of sale do not materially affect the price of lands, appears to me to show conclusively that the public generally do not require any greater security than is now possessed, seeing that they are usually content with less than the law strictly allows.

3. I do not understand wherein a register of the title to land can differ from a register of the title deeds; and I cannot therefore say whether the sale and transfer of land would be facilitated by establishing a public register of the title to land. So long as title deeds are, as they are now, the evidence of title, I cannot imagine how the title can be registered without a registry of the deeds. I gather from the following questions that some such plan appears to have been formed. But until I know the details of the plan, I can pronounce no opinion upon it; and so far as I can see, I must confess that it appears to me to be an impossibility.

4 and 5. The reply to these questions is involved in the reply to No. 3.

6. I cannot say. As a conveyancer I have little practical acquaintance with many of the items of expense in the purchase of land; but I should think upwards of one half.

7 to 24. This and the following questions depend upon the reply to No. 3. I do not think that a registry of title is practicable as distinguished from a registry of the title deeds. The proper mode of diminishing the expense attending the sale and mortgage of lands is, in my opinion, not to create an additional registry, but to simplify and improve the law of real property. I think that this might be done without diminishing the power which is now possessed of dealing with landed property by way of settlement. One great source of the expense of investigating titles is the proof of heirships, not only as affecting the beneficial ownership, but also as affecting some outstanding estate held only in trust or by way of mortgage. Another great source of expense is the impossibility of getting rid of a mortgage from the title, although it may have been satisfied. Another constant source of expense is the search for judgments and crown debts. I think that all these sources of expense might be safely dried up. I see no reason why all collateral descent should not be abolished, and why land should not, in default of issue of an intestate, vest, like leaseholds, in an administrator, to be held in trust for sale for the benefit of the next of kin. Such a provision would not only facilitate the investigation of titles, but would also nearly put an end to those numerous cases in which questions arise respecting the constructive conversion of land into money, or of money into land. I see no reason (particularly now that the courts of law are invested with an equitable jurisdiction), why the mortgage of land should not be considered at law as well as in equity as a security merely, so as to leave no dry legal estate to descend to the heir of an intestate mortgagee, and so that on payment of the money secured the mortgage might cease for ever. I see no reason why judgments and crown debts should be a lien on lands in the hands of a bonâ fide purchaser. So long as the lien existed, the establishment of a registry of judgment and crown debts was no doubt a great boon. But how much better would it have been to abolish the lien altogether! The advantage to the Crown or to a judgment creditor of occasionally obtaining payment of debts from an innocent purchaser would be far outweighed, in my opinion, by the abolition of the necessity of a search, which is a perpetual tax upon every purchaser and mortgagor. Again, there exist some antiquated rules, which occasion nothing but trouble and expense, and the repeal of which would be very beneficial; such as the rule that a man cannot assign to himself jointly with another, in consequence of which two deeds are often required where one would otherwise suffice. So the old rule that a debt cannot be assigned at law renders necessary a power of attorney on every transfer, and produces, so far as I can see, nothing but inconvenience. So the rules that a rentcharge is against common right, and that a condition of re-entry cannot be apportioned, often occasion deeds which would be unnecessary were those rules abolished. In addition to all this, the Statute of Uses, which lies at the root of all modern conveyancing, is so difficult of comprehension that many solicitors and not a few barristers have never thoroughly mastered it. It appears to me that this statute is viewed with more favour than it deserves. It is no doubt since, and partly in consequence of, the passing of this statute that the present powers of disposition which landowners enjoy have

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been attained. I think that these powers should rather be increased than diminished; but now that the system is settled I think that the means of working it might be simplified with great benefit. The difficulties of the law must add to its expense, and I have found, from considerable experience, that a clear notion of the Statute of Uses is generally the last thing that a pupil attains. I think that the repeal of this statute would be a great benefit, provided it were effected with that pains and care which so fundamental a change must necessarily require. Lastly, I believe that the expense attending all transactions relating to lands is in many ways indirectly increased by the absurd system which now prevails of the taxation of solicitors' bills. In adverse suits, where the person has to pay an attorney whom he does not employ, some such check may perhaps be required. But in other cases, it appears to me that a man ought not to intrust the management of his property to any person whom he cannot also trust to make a reasonable charge for his pains. An unworthy suspicion of the legal profession has cost the public much, and in many ways done harm. If taxation were abolished, I think that the inveterate verbiage, which is the opprobrium of the profession, would gradually cease, and that the length and expense of abstracts of title would be diminished. But the more civilized and educated society becomes the more varied will be its transactions, and the stronger will be its desire to retain or to increase its power of dealing in various ways with all the subjects of property. To reduce, therefore, the powers of landowners generally, for the sake of saving expense to those who have occasion to sell, appears to me to be a retrograde and therefore a wrong step, and even if practicable I do not think that it would be desirable.

25. I do not consider that the instances of fraudulent misappropriation by trustees of stock or money are numerous, but I do consider the instances to be numerous in which trustees of stock or money have, through mistaken kindness or misapprehension, wrongly dealt with their trust funds, so as to involve loss to their beneficiaries. In some instances, no doubt, the beneficiaries are recouped at the expense of the trustees themselves. But much litigation arises from cases of this kind, and when the beneficiaries succeed the hardship is only shifted from one innocent person to another.

26. It would, in my opinion, be very objectionable to vest the registered ownership of settled land in trustees, subject only to liberty to be given to beneficiaries of protecting themselves by distringas. I think that the great point of excellence in our system of real property, as distinguished from that of personal estate, consists in its capability of settlement without the intervention of trustees. People will have modifications of ownership; and if they cannot have them without trustees, they will use trustees for the purpose; and this is the reason why so many trusts and trustees are employed. But the system of trusteeships is cumbrous and inconvenient; and in my opinion the true point to be aimed at is the attainment of every modification of ownership that may reasonably be desired in as simple and convenient a manner as possible. Our system of real property, much as it might be improved, does effect this object more nearly than can be done under the system of personal estate. To oblige every tenant for life to find trustees, in whom the whole power over the property is to be placed, and to forbid him without their intervention to grant a lease, or do any other act which may now be accomplished by means of a power in a settlement, would, it appears to me, be to create a great amount of trouble and inconvenience, which would not be compensated by the greater facility of effecting a sale. The powers of sale usually inserted in settlements frequently exclude the family mansion and park, and are generally confined to the lifetime of the tenants for life, whose consent is indispensable. Absolute powers of sale are certainly frequent in mortgages of comparatively small properties; but where the property is considerable, notice is almost always required, although the purchaser is not obliged to inquire whether it has been given. But I do not think that the position in which a person becomes placed who is obliged to mortgage, is by any means that in which it would be desirable to place landholders who are under no such necessity.

27. I think that the security of settlements would be unduly impaired by their ceasing to bind the land. A portion depending on the personal security only of a trustee would certainly require a greater rate of interest than if secured on the land itself.

28. A map is a good servant, but a bad master; very useful as an auxiliary, but very mischievous if made indispensable. I believe that as many errors occur in mapping as in describing. Maps are now frequently and beneficially employed, but to oblige every person to convey by map would, in my opinion, be imposing an unnecessary burden.

30 to the end. The registry of title, if distinguished from a registry of title deeds, must necessarily confer a title independently of the title deeds. If a title be conferred independently of the deeds, it must be in exercise of some act of a judicial nature. Now, according to the first principle of justice, no judicial act ought to take place unless in the presence of the parties interested, or in their wilful absence after due notice. The decision of a doubtful title in the presence of all the parties is in fact a lawsuit. There can remain, therefore, nothing to distinguish a registry of title from a registry of the deeds, but a judicial decision on the title in the wilful absence after notice of persons who may be interested. The principle of non-claim was established in the infancy of our law,—a fine with proclamations in open court having been made by the statute 18 Edw. 1st. stat. 4. a bar to all claims not made within a year and a day afterwards,

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but with the important savings of infancy, lunacy, imprisonment, and coverture. At a later period the time was extended to five years, with the like savings; and in the year 1833, when the present statute of limitations was passed, the principle of obtaining a title by a fine and non-claim was deliberately abolished, on the recommendation of the real property Commissioners. This abolition is undoubtedly no reason why the like principle should not be again established; but it affords reason for grave deliberation before a principle established in a rude age, modified as civilization advanced, and finally abolished after careful investigation, should again be revived. An example of a judicial title independent of the title deeds has no doubt been recently furnished by the Incumbered Estates Court in Ireland,—a court from which great benefit has been derived. I apprehend, however, that the reasons which led to and justified the establishment of this court cannot apply to titles in England generally. The ground on which that court was established was, I apprehend, this, that the ownership of land involves duties which cannot properly be discharged by persons whose estates are deeply incumbered. This principle might, I think, with advantage, be applied to heavily incumbered estates in England; care being taken that proceedings under it be not used, as I believe they have occasionally been used in Ireland, as an engine of oppression. But when the land has once been transferred from a heavily incumbered to an unincumbered owner, there can be no object of public policy in encouraging a transfer from him to another; a resident and permanent proprietary being in fact more desirable than one which is perpetually shifting. The example of the Incumbered Estates Court in Ireland cannot therefore, it appears to me, be properly adduced in favour of a general registry of title in the sense in which it appears to be used in the accompanying queries. Other examples of judicial titles occur, I believe, in the registries of some foreign countries; and there can be no doubt that if the powers of disposition possessed by landholders in England were reduced to the level of those possessed in such countries, a great amount of expense would be saved both to vendors and purchasers. But I believe that very few buyers of land, and still fewer of those who own family estates, would be content to give up their powers of settling and charging jointures and portions on their lands, for the sake of diminishing the expense of sales. I believe that by far the larger portion of the land in England is, in some way or other, in settlement; and sales, though an important, are not the principal part of the business of a conveyancer. Mortgages are more frequent, and stand more in need of legislative intervention. But I believe that the true way to facilitate mortgages is not to perpetuate them on a register, but so to alter their form that they may be at law what they are in equity—mere charges, never again to be heard of after they have been paid off.

JOSHUA WILLIAMS,
7, New Square, Lincolns Inn,
20th October 1854.

Mr. W. Hazlitt.

MR. WILLIAM HAZLITT, Barrister (*Conveyancer, &c.*).—21*st October* 1854.

SIR,

IN answer to the questions which the Registration of Titles Commissioners have done me the honour to forward for my opinion, I beg, with respectful deference, to submit the following observations.

It appears to me that the necessity which now exists for the retrospective investigation of the title, on the occasion of each successive transfer, is an impediment of the most obstructive charactive to the sale and transfer of land. I conceive it to be preposterous that, every time a property changes hands, much the same process should be gravely gone through, involving much the same delay and expense, over and over again, as though no inquiry whatever had been made before on the subject. I am satisfied that the commerce in land would be largely facilitated by the establishment of a public register or record of the title to land, because I consider that there is a large amount of capital from year to year realized in large, and especially in small sums, which the possessors would gladly invest in land rather in any other security, if they could not only *be* but *feel* certain that what they bought would be surely and unquestionably theirs, and if they could attain this certainty of knowledge by some clear, intelligible, and inexpensive process; the cost, however, so that it be reasonable, being the least consideration; for Sir M. Hale is by no means singular in his readiness to "give one more year's purchase, could he be sure thereby to have a good title." The objection is, to give two or three, or half a dozen years' purchase, for the investigation of that, which after all, may be a bad title. The expense however, must, beyond all reasonable question, be materially diminished both to buyer and to seller, by the establishment of an official register; and especially to the seller, because each month's delay in selling that which he wishes to sell may occasion grave, perhaps ruinous loss to him. The proportion of expense of a purchase of land, now arising from the investigation of title, must depend upon circumstances, but I have little doubt that it would be found one tenth of the amount. I have within my information a case in which a landowner had to pay his solicitors 1,000*l.* as costs, &c. for their services, &c. in raising 4,000*l.* for him upon mortgage of his land.

The difficulties of the subject are confessedly very great, but by the learned persons who constitute the commission I conceive it may be found quite practicable to form a system of registration of title, which, avoiding a minute, and to purchasers generally, unin-

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telligible, and therefore deterring, setting forth of all the deeds, shall, in the words of one of the commissioners, "satisfy the purchaser that there is the full right to sell that which he proposes to buy." What is needed, I conceive, is to have placed upon public record, in an official and (at reasonable cost,) accessible form, the clear, precise, intelligible condition of the actual ownership and liabilities of a property at the time of the registry, which condition, so recorded, shall be held indefeasible, and the unquestionable basis upon which the purchaser may conduct all future dealings with that property. No precautions can be conceived too minute, too scrupulous, too anxious, for the purpose of thoroughly and accurately ascertaining this condition of the property and the exact interests of all claiming or to claim under it; but the precautions, once systematically applied by a tribunal possessing the confidence of the country, would relieve the minds of all persons desiring to invest money in land from the doubts and fears which now beset them; and commerce in land would then become as popular, because as easy and secure, as commerce in stock and other securities now preferred to land—not from affection, but from fear of risk elsewhere.

The course of proceeding might in outline be this: the owner who desires to have his title placed on the public register would present a petition accordingly to the land tribunal, by whom, or under whose immediate supervision, the title would be thoroughly sifted upon a rigid investigation of all the deeds connected with it, the completeness of which deeds should be secured by the publication of ample notice to all persons having, or claiming to have an interest, present or prospective, in the property. (A scheme for a government insurance for indemnifying parties who might, notwithstanding such notice, be ultimately dispossessed, is well known to the commissioners.) The title, thus ascertained and certified, would be transmitted to the registrar to be enrolled, and so enrolled, in clear, distinct, intelligible language, would operate as *the actual* living, indefeasible title, with the same effect and force as those titles under the Irish Encumbered Estates Act, which has so eminently raised the value of land within its scope. There seems to me every reason why the benefit and the satisfaction of such clear and indisputable establishment of ownership should be extended to estates not encumbered. The great points to secure, I conceive, are, a clear title to register, and an authoritative public record in which that title shall be registered clearly.

What forms of ownership should be set forth must be determined by the learned persons from whom this great change must emanate in its perfected form. The parts of deeds which, in his scheme for the registration of deeds, Sir M. Hale contemplated to disclose to the public eye, were "at least so much of the deed or evidence that concerns, first, parties, *grantor and grantee;* secondly, *the things granted;* thirdly, *the estate granted;* fourthly, *all those parts of the deed or evidence that have any influence upon the estate, as rent, reserved conditions, powers of revocation, of alteration, of leasing* the trusts, &c." The history or past deduction of the title, would, in its retrospect, be the material from which the tribunal would ascertain the facts of the title for the register.

With regard to settlements, trusts, &c., I conceive that they should all appear, as above, on the register, and that, so recorded, it should be not only the privilege but the responsible duty of all protectors of settlements, trustees, &c., to put a distringas, (by affidavit say,) on the register, defining the particular interest protected, but operating upon the whole property; each successive acquirer of such interest should register his name. As to the liability to these settlements, &c., it seems expedient, that the land being the security on which they are based, the land should remain subject to them until they are cancelled. The enforceability against the registered owner personally, apart from the land, might be utterly futile, while the registered owner having had on the register notice of these interests prior to his purchase, could have no valid complaint against the persons who so exercised their right to put on the distringas.

As to maps, there can be no reasonable doubt that where efficiently available they should be made use of, in common with every other practicable means of ensuring accuracy of identification. There already exists official mapping of a considerable portion of the home empire, on a minute scale, and the survey of the remainder is proceeding.

I would have the registration voluntary, because, in my humble judgment, the great benefits of the system would before long ensure its adoption, as matter of choice, with the universal body of land-owners.

G. W. Sanders, Esq. (Signed) WILLIAM HAZLITT.

Mr. G. Le Blanc.

MR. GEORGE LE BLANC (*Registrar of Deeds, Middlesex*).—21*st October* 1854.

1. I CONSIDER that the sale and transfer of land is occasionally impeded, and generally rendered more expensive, by the investigation of the title on the occasion of each successive transfer; but I am unable to state what may be considered a proper amount of expense for such investigation.

2. I am of opinion that the disposition of land is impeded and rendered insecure by reason of the want of a registry of the assurances deducing the title; but, as I do not understand the mode of registering "the title," as distinguished from the "assurances deducing the title," I am not able to form an opinion whether or not a registry of the title would be attended with advantage.

3. For the reason above stated I am unable to give an opinion whether or not the sale and transfer of land would be facilitated by the establishment of a register of the title.

4 and 5. I cannot answer these questions for the reason before stated.

6. The expenses arising from the investigation of, and inquiries into, the title and

matters connected therewith, vary so much in different cases that I am unable to state the average. *Mr. G. Le Blanc.*

7. I cannot venture to say that it is impracticable to form a registry of title, as distinguished from a register of the various deeds and assurances under which the title has been derived, although no plan of such a registry occurs to me which would be practicable and useful.

8. I do not understand how any mode of registry (as such) can be instrumental in simplifying the title to land or the forms of conveyance under the existing laws relating to real property.

9. I cannot answer this question for the reason given in my reply to Question 2, but I may be permitted to state that I understand the object of registry to be, to convey to a purchaser information of all deeds, &c. creating estates, rights, or interests affecting the subject of his purchase, and by which it may be defeated or abridged, as well as those by which the title may be supported.

10. As I believe the proportion of land held in fee simple to be comparatively small, I think the exhibition of the present actual and existing title, (I mean the different estates and interests which, together, comprise the fee) would, in most cases, involve a partial history or past deduction of it, or a reference to several deeds, &c. I do not consider it possible, under the existing laws, to avoid a retrospective inquiry into former dealings and transactions. Whether or not it would be essential to the purposes in view to adopt the principle suggested, I am unable to state, for the reason given before (Question 2.)

11. A registry of assurances need not disclose the deduction or history of the title; it is sufficient to direct attention to the assurances, &c. containing the title. If it should be necessary, under the mode of registry proposed, to disclose the deduction and history of the title (as I understand the expression), it would in this respect differ from a registry of assurances. If by "the deduction and history of the title," a reference to the assurances, &c. comprising the title is intended, a registry of the title would be very similar to a registry of assurances in this particular.

12. I am not aware what forms of ownership would be admissible to the register, but I do not think it would be desirable, under any system, to provide that all forms of ownership, except those to be specified in an Act of Parliament, should be of the nature of trusts only. Such a provision would, I think, lead to difficulty and confusion.

13. This question seem to refer so closely to the system proposed, with which I am unacquainted, that I am not able to answer it.

14. I do not think it would be desirable, under any circumstances, that equities and trusts, (except those protected) should become personal confidences merely, enforceable personally against the registered owner, but not conferring any right against the land itself. Unless protection was allowed to all trusts and equities, such a provision would be fatal to the security at present afforded by the land which no personal confidence can supply.

15. I think trusts and equities intended to affect the registered owner might be protected on the register, so as to prevent the registered owner from transferring the land while such protection should exist, or from transferring it otherwise than subject to the protected interest; but, for the reason before stated, I am not able to form an opinion whether or not this could be effected consistently with the objects above mentioned. It seems to me that the protection of trusts, &c., would tend to make the system like a registration of assurances.

16. I am unable to answer this question, because I do not understand what "the principle of a simple register of title" is. It appears to contemplate more than an ordinary registry of assurances, as the question leads me to suppose it might subvert the whole system of law relating to settlements of real property. I do not, however, perceive anything inconsistent with the existing system of settlements in the above-mentioned objects, so far as I am able to comprehend them. I think the existing system of settlements will be continued in consequence of the necessity of the owners of land to make it the subject of settlement.

17. I think that settlements, trusts, and equities might be adequately protected by allowing the parties interested under them, or others, to put a distringas, caveat, or stop upon the register, or by taking any other proceeding in the Registry Office which would effectually give information that such settlements, &c., were in existence.

18. I think the distringas, &c., should not have the effect of altogether preventing a transfer while uncancelled. The transfer might be permitted to take place, subject to the interest protected by the distringas, &c. as a reversion or a remainder, or an estate, subject to a rentcharge or a mortgage, may be purchased.

19. I think it possible that a distinction could be made between those interests which might prevent a transfer and those which might not so operate, but I am unable to suggest what that distinction should be. I do not think it would be advisable to make any such distinction; it might be left to the discretion of a purchaser, whether or not he would buy an estate subject to an outstanding interest.

20. I think all equitable interests should be allowed to be protected by distringas, &c.

21. I do not think it necessary that the register should define or describe the interest of the person putting on the distringas, &c. it would be sufficient if the distringas sufficiently directs attention to the deed by which the interest is created.

22. I do not think the distringas, &c. should by themselves give any benefit; the effect

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of it would be to put the purchaser on his guard against the interest protected. If the distringas, &c., remained upon the register the purchaser should be bound to take notice of it at his own peril.

23. I think the production of the deed under which the person claims should be the authority or evidence required to entitle him to put a distringas, &c. on the register.

24. I do not consider the form of the notice of much consequence. A distringas, &c. might, I imagine, be made to answer all the purposes of a memorial.

25. I consider the instances of misdealing by trustees of stock or money involving loss to their beneficiaries to be very numerous. Instances of misappropriation are also frequent, particularly where the funds are small.

26. Assuming that it is possible to vest the registered ownership, both legal and equitable, of settled land in trustees, subject to a beneficial interest in others, (which beneficial interest is in fact the equitable interest,) I think it would be objectionable or at least unnecessary so to vest it, subject to the liberty given to beneficiaries of protecting themselves by distringas, &c. It would be to permit the beneficiaries to do, in a less secure manner, by means of a settlement and a distringas, &c., what they now do by a settlement only; the settlement and the distringas, &c. together would have the effect the deed has now, subject to the risk of any informality in the distringas, &c., or any advantage that might be taken in point of time.

27. It does appear to me that the security of settlements and trusts would be unduly impaired by their ceasing to bind the title and follow the land (as at present), if they were made to depend for their efficacy, as against the land, upon acts and forms external to the settlement, such as are above suggested.

28. I have not considered the subject sufficiently to be able to give an opinion whether or not it would be necessary, for the purpose of securing accuracy in the registered title, and for the security of purchasers, to couple the registry with a public map, but I think it would be necessary to give every possible facility of identifying the property dealt with.

29. As far as I am competent to express any opinion, I think it would be indispensable to the registry of the title that the registrar should ascertain the accuracy of the description and the identity of the land.

30. I cannot give an opinion whether or not it would be necessary to invest the chief registrar with judicial authority, because I am not informed what duties the registrar would be required to discharge.

31. I think the registration should be compulsory.

32. I do not think the registration should at the outset confer a warranted or parliamentary title.

33. I think it would be sufficient, if the provisions of the registry related only to the title subsequent to its commencement, leaving the antecedent title to be still, as now, the subject of investigation. I do not anticipate that by lapse of time or otherwise, such investigation will become unnecessary, unless some great change should be made in the law.

MR. DANIEL, Q.C.—23*rd October* 1854.

Mr. Daniel, Q.C.

1. I DO.

2. I think, under the present system, which possesses neither a registry of title nor any proper register of assurances, the disposition of land is both impeded and rendered insecure. The seller as well as the buyer is put to unnecessary difficulties, involving delay and expense to both parties in the completion of the purchase; and when the purchase is completed, the purchaser does not obtain the same absolute and indefeasible title to and control over the estate conveyed as he had to and over the money parted with; in effect, an uncertainty is exchanged for a certainty. I cannot doubt that this state of things affects the money value of land, and constitutes a burthen which might, I think, be removed by a proper system of registration.

3. I think they would.

4. In each of these ways.

5. To both.

6. I cannot from my own professional experience state the proportion, but without doubt in every instance it is considerable, and in many oppressively large.

7. I think it is, to the extent explained in my answers to subsequent questions.

8. I think it might, and would in various ways. It would simplify the title to land, by rendering it unnecessary to look beyond the last absolute ownership or dominion over ownership appearing upon the register—by rendering unnecessary all the expensive precautions hitherto taken for securing the legal estate—also the expense of covenants for production of title deeds, and procuring production of deeds when in the hands of third persons, and all the other expenses, occasionally very burthensome, arising from inquiries for deeds, and discovering in whose hands they are. And titles being simplified, of course abstracts of title would be simplified also. In many cases abstracts would be rendered unnecessary or entirely dispensed with—the certificate of registry, where there had been no subsequent dealing with the ownership, or a short statement of the subsequent dealings, where there had been any, being all that would be requisite. The forms of conveyance would be reduced within the limits of ancient brevity, precision, and sufficiency—recitals, lengthy descriptions of parcels and general words being no longer necessary or excusable.

9. I think that every interest, whether legal or equitable, (assuming this distinction to continue,) which is or shall be recognized by law as binding specific land, or, if general

charges are permitted to continue, land specifically, should, on the deposit by or on behalf of the owner of such interest of the evidence of his title, be put on the register; and that every title registered generally should, in favour of subsequent dealings represent unincumbered ownership in respect of the title so registered; and that every title appearing by the register to be subject to any specified charge or incumbrance should, in favour of subsequent dealings, be deemed subject to no charge or incumbrance beyond what may be so specified. *Mr. Daniel, Q.C.*

10. I think it would be essential to the full accomplishment of the purposes in view that the principle of exhibiting only the present and actual existing title, without the history or past deduction of it, should be adopted; and that a retrospective inquiry into the dealings and transactions prior to the last registered title might and should thus be avoided.

11. I think, if after registration the deduction and history of the former title were to be disclosed and investigated at the risk of the purchaser, such a register would, in effect, be only a register of assurances; which, however, although in my opinion less beneficial to the landowner than a registry of title, would, if established on a proper system, be a very important improvement upon the present state of the law.

12, 13, and 14. I think all forms of ownership not registered, whether admissible to the register or not, should be personal confidences only, and not charges on the land.

15. I think these objects might be accomplished by means of a caveat or distringas.

16. I think the existing system of settlements, by which the limitations and trusts of the settlement modify and become part of the title, might be continued consistently with the principle of a simple register of title, and with the objects proposed in the registry; at least according to my view of what such a registry should be, and the objects to be accomplished by it. I will explain my meaning by a few illustrations. Take a settlement on marriage by an owner in fee, containing the usual limitations to the parents for life, remainders to trustees to preserve, remainders to the issue in strict settlement with the usual powers of sale and exchange, to be exercised with the usual consent of tenants for life—the settlement would be registered, and thereupon the entry of the settlor as absolute owner would be cancelled, and the entries of title on the register would be according to the interests of the several parties under the settlement. The settlement being upon the register, and it being (as I conceive at least it ought to be,) the object of the law to protect the interests created by the settlement by means of the register, no title could ever be made except in accordance with the settlement. Suppose a sale by the trustees under the power, with the consent of the tenant for life—the entries of title under the settlement would be cancelled, and an entry of absolute ownership made in favour of the purchaser; thenceforward the absolute ownership would be deduced from the purchaser, and the inquiry into the former title unnecessary. The parties beneficially interested in the settled estates thus sold would follow the money in the hands of their trustees as they do now; and when the moneys are re-invested, the settlement with all the interests existing under it would be registered as applicable to the newly purchased lands. Suppose a sale by a tenant for life under the enabling provisions of the Lands Clauses Acts, or similar Acts—upon registering the purchase deed, the entry on the register under the settlement, *quoad* the lands thus sold, would be cancelled, and an entry of absolute ownership made in favour of the purchaser. Again, suppose the estate to be enjoyed under the settlement, and upon the eldest son coming of age a resettlement should take place—upon proper evidence of the birth and majority of the son and registry of the new settlement, the entries under the original settlement would be cancelled, and new entries made according to the title created by the new settlement. In every instance the entries upon the register should from time to time, whenever practicable, show the absolute ownership or dominion over the absolute ownership. In the case of property legally limited to a person for life, remainder to persons unborn unascertained or not, *sui juris*—a case in which the absolute ownership, or dominion over the absolute ownership does not exist—the register, the document of title, being there, would show and operate upon and preserve the real title. The law permits the inheritance to be thus dealt with, and I do not conceive that it is necessary for the accomplishment of all the beneficial purposes of a registry of titles that the law should in these instances be interfered with. I do not see the necessity of making land at all times, and under all circumstances, as available for sale as stock in the public funds or as the stock or shares of an incorporated company. At all events, it seems to me, this is a question of general policy not necessarily connected with a register whether of title or of assurances. According to my view, a tenant for life of land (except under enabling provisions of Acts of Parliament which in effect give him dominion over the absolute ownership,) ought not, by means of the register, to be enabled to deal with the inheritance; but the register would of course evidence conclusively his title, and that of his alienee, to the life estate. In the case of titles not vested or capable of being disposed of, as of a present devise, to persons unknown, unascertained, or not *sui juris*, or a descent or intestacy to an infant heir, the registry would simply show title in the deceased testator or intestate; and no title could be acquired through the register until some person entitled procured himself to be entered on the register. As there is always some person entitled in law to the possession or receipt of the rents and profits, provision might be made that, in such exceptional cases, such persons might be entered on the register according to the real title on deposit of the evidence of such title; and after such entry made, the absolute ownership could not be dealt with until the title of such absolute owner was produced and entered

Mr. Daniel, Q.C.

on the register. In dealing with cases where the right to be entered on the register depended upon evidence of extrinsic facts, I think the registrar should have jurisdiction to receive, consider, and act upon all such evidence, whether strictly *ex parte* or not, but he should not have any contentious jurisdiction.

17. I think any parties entitled or claiming to be entitled to any interest, legal or equitable, in the lands—or claiming a right in respect of the lands, as against the registered owner, in the nature of a personal confidence—should be at liberty to lodge a distringas against any alienation of the estate, upon signing the same undertaking as to costs as contained in the ordinary stop order in the Court of Chancery; but I do not think interests that bind the land would be adequately protected by a right to the distringas merely—the persons entitled to such interests should, I think, be entitled to the direct protection of the register, if they desire to have it.

18. I think the distringas should be left to operate according to its nature and effect; if an alienee choose to accept a transfer subject to the distringas, as at present advised, I see no reason why he should not be at liberty to do so.

19. I do not see any advantage in such a distinction.

20. All equitable interests, which, as the law stands, would bind the land according to the registered title, should be allowed to protect themselves by distringas certainly, and I think, also by registration. All other interests should, upon alienation of the land by the registered owner, be treated as merely personal confidences. I will illustrate what I mean by an example. Suppose a conveyance to trustees in fee upon trust to sell and give discharges, and stand possessed of the monies, upon trusts specified; the beneficiaries or any of them might, upon giving their undertaking as to costs, lodge a distringas,—which would have the effect, doubtless, of giving them notice of any sale. But I would not permit any one or more of them to register his right to the money as against the land; because, as the law now stands, no portion of the beneficiaries has a right to prevent a disposition of the fee in accordance with the trusts, it being the right of each and every beneficiary to have the trust performed according to its tenor. If all the beneficiaries, being *sui juris*, desire that there should be no sale, and the trustees still insisted on selling, or if a sale was threatened by the trustees contrary to the trusts, the remedy of the beneficiaries should in my opinion be the same after the register as now; namely, by injunction in the Court of Chancery and registry of the suit as a *lis pendens*.

21. I think the register need not define or describe the interest of the person putting on the distringas; but should, as in the case of stock, state only the name and address of such person.

22. As in the case of common stop orders; by discharging the distringas in favour of the assignor and entering it in favour of the assignee.

23. I think the person lodging the distringas should, as in obtaining a stop order in Chancery, show his interest, and, if applied for *ex parte*, verify it by affidavit.

24. I think the mode suggested sufficient, and cannot suggest any other.

25. Whether frequent or numerous I cannot say; doubtless they occur.

26 and 27. In my opinion the register should simply record, and not have the effect of altering the rights, either legal or equitable, in or to the land. These I would leave to be regulated in all respects by the lawful contracts and dealings of the parties appearing on the register; and wherever the registered title showed a right, amounting to absolute ownership, or dominion over the absolute ownership, I would give the exercise of that right full operation and effect upon and by means of the register. If the beneficiaries have, by the registered documents of title, secured to themselves a control over the absolute ownership, I would secure them that control by means of the register—if they have not I would not make the register the means of giving it them. According to my view therefore, of the effect and operation of the register, the considerations suggested by these questions do not appear to me to arise. To explain my meaning I will resort again to an illustration: a conveyance to trustees upon trust for sale and to divide the monies among specified persons, but without power to give receipts—in effect, therefore, the legal estate in one person, the equitable interest in another—the deed registered ought not, according to my view, to enable the trustee to bind the equity by an alienation. The concurrence of the cestuique trust is now necessary to constitute title, and so I would leave it upon the register; but if the concurrence of the persons appearing by the register to be entitled to the equity were procured, I would make their concurrence effectual against any unregistered alienee of their equities.

28. I think a public map is the only sure foundation of a proper system of registry, whether of title or of assurances; but if the objections of delay and expense in its preparation, or any other objections urged against it, should be deemed insuperable, I think the advantages of a registry, which would insure reasonable certainty in title, are so great, that I would not abandon registration because I could not get the map.

29. If a map were adopted, it would, I think, be indispensable that the register should ascertain the accuracy of the description and identity of the land; but if registry were adopted without a map, I think the description and identity might rest upon evidence of ownership and reputation, aided, as of course it would be in numerous instances, by voluntary agreements between owners.

30. I think if a public map were adopted as the basis of the registry, the chief registrar should have judicial authority to ascertain and settle boundaries; and I think for such purpose the owner in possession *de facto* might be safely taken to represent the fee *de jure*. For all other purposes of title I think the registrar's jurisdiction should be limited to non-

contentious cases between parties competent; and in any case the registrar should have power, if he thought proper, to require the order of the Court of Chancery, or to refuse registration for reason assigned, upon which the opinion of such court might be taken. In cases not within the jurisdiction of the registrar, the claimant should obtain the order of the Court of Chancery, such order to be obtained on adducing proof of his title. *Mr. Daniel, Q.C.*

31. To the extent of ascertaining the lands and boundaries, and the persons in possession or receipt of the rents and profits as owners *de facto*, I think the registration should be compulsory, afterwards voluntary, but with these enactments: that no unregistered title should prevail against the registered; and that a registered title only should be recognized by courts of justice as the foundation of a right. Such enactments would, I conceive, induce all persons to register, as the only means of rendering their properties perfectly safe.

32. and 33. I think it would not be expedient that the registry should at the outset confer or warrant a parliamentary title. I think it will be sufficient that the provisions of the registry should operate upon the subsequent title only, leaving the prior title to be dealt with according to the contract of the parties; and I think that in a very few years the right to this investigation will be excluded by contract, and the title as shown by the register readily accepted.

W. T. S. Daniel,
9, Old Buildings,
Lincoln's Inn.

23d October 1854.

Mr. Dugmore, Barrister (*Conveyancer, &c.*).—23*rd October* 1854. *Mr. Dugmore.*

Sir,—I beg to forward to you for the information of the Commissioners for inquiring into the subject of registration of title the following replies to the series of questions accompanying your letter of the 28th ultimo.

1. Considering as I do that a retrospective investigation of the title to land upon each successive sale is an essential element in the laws of real property, I can only say, with reference to the question whether the amount of expense occasioned by the necessity for such investigation is greater than it ought to be, that it is only greater in so far as it might be reduced, (and, as I think, to a considerable extent it might be reduced,) by amendments in those laws and the practice of conveyancing.

2. Without referring to any particular plan of registration, and assuming only for the purpose of answering this question, that a plan of registration could be devised involving a less amount of evils than those it was intended to remove, I can have no doubt that the disposition of land is both impeded and rendered insecure by the want of such a register.

As this question points to a register either of title, or of assurances deducing the title, perhaps, without digressing from the subject, I may be permitted to observe, as the result of my experience during thirty years' extensive practice as a conveyancing counsel, that in my humble judgment, with every disposition to see the objections to the system of conveyancing removed, the scheme for a metropolitan register of assurances, as embodied in the bill of last session, would have proved, had it been sanctioned, a very heavy burden upon the country, by increasing rather than diminishing the expense and delay at present complained of; while the advantages it promised in the way of additional security to purchasers and others, would have accrued only to a succeeding generation—if the system itself survived so long—and would then have been in a great measure counterbalanced by the amount of danger it introduced through the working of its complicated machinery, and the multiplicity of transactions, and of names resembling each other that would have been brought upon a single register. The transmission of documents and information from localities remote from the register must necessarily be accompanied with much risk arising from liabilities to accidents and opportunities for fraud. And beside these objections, which would apply with equal force to a metropolitan register whether of title or of assurance, it appears to me, considering the cumbrous forms employed in conveyancing, the burden of which must ere long force a reform in that department, that it would be extremely impolitic at the present moment to establish a register of assurances that would, as it were, sterotype a decaying system, and perhaps stand in the way of its thorough reformation, or in case of its being superseded by a better, would induce the inconveniences of a register begun in one era and continued in another.

3. Assuming the register or record of title contemplated to be such as it ought to be to answer in a substantial manner its professed object, the existence of such a register would doubtless greatly facilitate the sale and transfer of land.

4. Such facilities would be increased in all the ways here specified.

5. I think seller and buyer would share in the saving of expense.

6. I am not competent to answer this question.

7. I am so fully alive to the advantages that would result to the ends above contemplated from a register of title, that I am unwilling to express an opinion unfavourable to the attempt at devising one until I have had an opportunity of maturely considering the subject in all its bearings, and with a model before me; my present impression is that it is impracticable, without an entire subversion of the principles of property, except in the modified form which I shall presently take the liberty of suggesting.

Mr. Dugmore.

8. Supposing a register established possessing all the requisites I consider essential to its beneficial operation, in contrast with a register of assurances, it would obviate the necessity for the preparation, examination, and perusal of abstracts as at present practised, reduce the length of instruments of transfer, and would, besides, greatly lessen the amount of time and expense so frequently incurred in searching for lost documents and obtaining access to them in the hands of third parties.

9. Every species of ownership should for the sake of protection be put upon the register, with the exception of leases at rack-rent, and such charges as are registered in the office of the Court of Common Pleas, which office, I conceive, must still be kept on foot.

10. For the purposes in view I think it would be essential to confine the scope of the register to the present actual and existing interests, but how this is to be done I cannot conjecture, and it appears to me to be one of the objects which will be found practically unattainable.

11. I think it would not materially differ, unless it were put on the footing of an abstract or synopsis and all necessity for reference to the documents themselves were dispensed with.

12. If any species of interest be excluded from the register (which, as I have stated, should not, in my opinion, be the case), such as are excluded must almost of necessity be put upon the footing of personal trusts and not affect the title of purchasers; but I think a distinction might be made between trusts arising by contract, as to which it might be left to the parties to declare their intention that the trusts should be protected, if that were their intention, and those arising either by act of law or under wills, in regard to which latter class of trusts it would be unsafe to depend on any expression, or the absence of any expression, of intention on the part of testators.

13. and 14. If any equities be excluded from the register, it must follow as a necessary corollary, incident to the very object of the register, that such equities should not confer any right as against the land.

15. I think they might and ought to be protected, except so far as such protection is by contract dispensed with; but this of course could not be without in some degree impairing the usefulness of the register for purposes of transfer.

16. I think the present system of settlement might be modified in regard to the forms of deeds without materially interfering with the nature or quantum of interests commonly created by them. Any material interference with the nature of such interests I think would be objectionable, but under modified forms the system might, I think, be continued consistently with the objects contemplated by a register of title.

17. I do not; there must be numberless cases in which the means of protection would fail of being used, through ignorance, fraud, neglect, or incapacity, and from parties being yet unborn for whom interests are designed.

18. I conceive that in the case of every protected interest, whether protected by entry on the register or by distringas, a transfer might be permitted subject to such interest, and this serves in my opinion as an argument in favour of all such interests being entered on the register.

19. I think no such distinction should be made.

20. In my opinion it should be extended to all.

21. In the first instance it might be sufficient for a person putting a distringas on the register to enter his name and address only, as in the case of stock. But the distinctions contemplated in this and the former question serve to strengthen my opinion that all equitable interests should be entered and specified in the register and not left to be notified by distringas; practically, many transactions would doubtless take place with perfect safety as matters of personal confidence, which would not affect the registered title.

22. It must be regarded as a registered interest, and all transactions respecting it registered as matters of title.

23. No distringas should be allowed to be put on the register without some authentication of the claim; say, by the signatures of two solicitors, who as officers of the court would be answerable for improper entries.

24. I can only suggest as I have already done that all such interests should be registered.

25. I consider such occurrences, though positively frequent, yet, in regard to the opportunities for such misdealings, they are comparatively few.

26. In my opinion, to vest so large an amount of confidence and power in trustees generally, especially in the case of a sole trustee, would be decidedly objectionable; as already stated, in many cases interests, such as those belonging to infants, or intended for persons yet unborn, would fail to have the protection of a distringas afforded them. I think, however, the object contemplated might in a great degree be accomplished by giving trustees or some individual to be appointed by the court, powers of sale, &c., to be exercised under the authority of the court in cases where no such power is given by the document creating the settlement or trust.*

* This has been in a manner accomplished by the "Leases and Sales of Settled Estates Act," passed since these observations were written.

Mr. Dugmore.

27. I think the security of settlements, and more particularly of interests derived under wills, would be unduly impaired by their ceasing to bind the land.

28. I think not; on the contrary, I think a public map, if coupled with a register, would in process of time tend to complicate the title. But it deserves consideration whether parties putting a title on the register should not be at liberty to put in a map properly authenticated, or an extract from the parish tithe map to be referred to on the register.

29. I think the registrar must be bound to ascertain the accuracy of the description and identity of the land.

30. I should prefer that the chief registrar should act ministerially under the control of the court rather than himself exercise any judicial authority. But there are many cases suggesting themselves to my mind involving great difficulties in the way of a register of title, in connexion with this question; as, where the interest claimed arises out of the doubtful construction of documents, or depends upon uncertain evidence, or consists simply of possession adversely to the rightful title. How these are to be brought upon the register I cannot see.

31. It should be so far compulsory that no title that was not registered should be cognizable either at law or in equity, except as a matter of personal trust. Cases of fraud would call for some special provision.

32. I think the registration should at the outset confer a warranted title. But how this is to be obtained consistently with a due regard to existing interests, I am utterly at a loss to conceive.

33. I think very little will be gained by a register relating only to the title subsequent to its commencement. In numberless instances, generation after generation may pass away in the successive enjoyment of property without any assertion of title on the register; and when made some thirty, forty, or fifty years hence, it must either be clothed with a parliamentary or other warranted title, or else after that lapse of time a retrospective investigation of title would be needful.

I have now given my answers as requested to the accompanying questions with as much deliberation as the time at my disposal would allow, but which I should have given with more satisfaction, if possessed of a precise idea of the form and general scheme of the register of title to which the questions have reference.

I venture, in conclusion, to suggest for the consideration of the Commissioners the brief outlines of a plan which has recommended itself to my mind as calculated to answer the objects of a register of title, and at the same time to afford a means of simplifying the forms of transfer. It is this: that the principle of the transfer of copyholds (admitted on all hands to possess great advantage over that of freeholds both in respect of expense and security) should be applied to all descriptions of landed property. Thus, that a register office should be connected with every county court, to be presided over by a registrar; that, as in the case of surrenders before or under the authority of the steward of a manor, all transfers should be taken *vivâ voce*, either by the registrar himself, or by a deputy under a *dedimus potestatem* in each particular case—a minute of such transfer to be signed by the parties and the registrar or deputy, and, together with the *dedimus*, if the transfer be taken by a deputy, to be entered on the register. It is scarcely needful for me to point out the great facilities and saving of expense that would be afforded by this process. And as it would be part of the plan that the registrar should keep a list of every *dedimus* issued which would be open to public inspection, and that purchasers and mortgagees should only be affected by the contents of the register and list, it is obvious that the most complete security would be afforded to all *bonâ fide* dealings. In the case of parties claiming by will, descent, or personal representation, they would of course be obliged to enter their titles at the risk of being defrauded of their rights. In what manner such claims should be authenticated—what descriptions of interest should be allowed to be subjects of transfer and registration—whether interests not so registered should be capable of protection by distringas or otherwise—are points for consideration involving no greater difficulty than those connected with the general register of title of the kind contemplated in the questions of the Commissioners.

I have, &c.

W. Dugmore.

G. W. Sanders, Esq., Secretary, &c.

Mr. Willcock, Q.C.

Mr. Willcock, Q.C.—23*d October* 1254.

1. I do not, inasmuch as the title must be investigated however it may be evidenced.

2. It is my opinion that the disposition of land is impeded and rendered insecure by reason of the want of a registry of the assurances and facts constituting title; but that a registry of title deficient in these qualities would render the disposition of land more difficult, and subject the title to more suspicion than at present.

3. I am of opinion that it would not, unless the muniments of title are registered.

4. There can be no doubt, that if the title be asserted in a public registry, it would be possible to save some expense by reducing the length of deeds; but I do not think that expense would in fact be saved. The present verbosity of deeds arises less from the necessities of the title than from the use of forms regarded as conventional.

Mr. Willcock Q.C.

5. My impression is, that including that of registration, the expense would in fact be increased. I cannot see how such a registry can make the buyer more secure, unless assertion of title is to constitute title.

6. It is not a subject of either proportion or average. A small estate may be held under a long complicated and embarrassed title, and the title to a very large one may be short, simple, and clear.

7. It appears to me to be a mere delusion or worse. The true title must depend upon the effect of the facts and assurances. A register of title must, therefore, either contain the deeds and facts, or (if correct,) the effect of them. An authoritative statement of the latter would amount to an adjudication on the title. Is every one who may possibly have or acquire an adverse interest to be convened before the registrar, that the title of any applicant for registration may be settled; or is his claim to be cancelled without an opportunity of being heard? Is indeed every title in the kingdom to be prematurely, perhaps unnecessarily, tried by a registrar; and that to make titles secure and to save expense?

8. The simplification of forms of conveyance appears to me to have little connexion with such a register of title, unless it is intended to be based on the destruction of all interests adverse to those asserted on the record; and even that would not in my opinion practically effect any great saving.

9. The proposition implies, that the register would be imperfect to the extent of its omissions; and every title unregistered would constitute an omission. The fee is so often divided into particular estates, that the registry would be exceedingly imperfect, unless minor estates are recorded; and I see no substantial ground for distinguishing the fee from any parts of it, for the purposes of registration. Indeed the most important object of a registration is, to guard against incumbrances and interests which are not attended with a change of possession. If the title to the fee is alone registered, that object might be entirely defeated.

10. It is impossible to avoid such inquiry; unless, which is incredible, a parliamentary title is to be acquired by mere allegation.

11. I cannot perceive the difference.

12. 13. and 14. It appears to me that if a registry of title without the assurances is introduced, the mischief would be consummated by pursuing the artificial distinction between trusts and estates. The only value of such a registry rests in the supposition that the purchase or charge is to be obtained from the true owner. If then, any title is registered, it should be the title of the *cestuique* trust, and not of the trustee, who is as much a part of the machinery as the registry itself. We should purchase the marketability of estates very dearly, if they are to be made saleable by trustees in contravention of their trusts. Our law as to trust estates is already too artificial. Very little experience in courts of equity is sufficient to show the fallacy of relying for relief on the enforcement of trusts personally against trustees who have conveyed away estates. They are generally in a state of destitution before they appropriate trust property to their own use.

15 and 16. To protect such interests effectually, the instruments would in truth be registered, as their purport must be stated.

17. I doubt the adequacy of the protection. But assume it adequate:—the notice of an indefinite claim would induce the intended purchaser or incumbrancer either at once to treat the title as bad, or otherwise to take perhaps much trouble, possibly several journeys, and most probably incur much delay to obtain the information, which, if placed on the registry by a note of the essential parts of the document of title, would be afforded on the first inspection.

18 and 19. Unless such distringas, caveat, or whatever it may be called, absolutely prevent the transfer, the interests of the party really entitled to the property might be most injuriously affected, if not defeated, by a repetition of transfers. Parties having charges on the estate might not be equally, but they might be seriously prejudiced by such contrivances.

20. See No. 12.

21. See No. 16 and 17.

22. I see no means, except by a registration of the change of interest, which would in effect be a registry of assurances.

23. Unless any party desiring to do so is at liberty to put a distringas, &c., the registering officer would exercise the functions of a judge without appeal.

24. None except actual registration.

25. Frequent and numerous; but I think that more frequently the mis-appropriation is at the instance or for the benefit of some one of the beneficiaries, generally the first tenant for life or his wife.

26. I think it highly objectionable. See No. 12.

27. I think that the present system might be much improved; but it would be rendered incalculably worse by registration of the title of trustees as an absolute title, with such imperfect protections as those suggested.

28. I consider a public map essential to any system of registration.

29. If the title is to be accepted without investigation of its history, it is indispensable that the registrar should ascertain the accuracy of the description and identity of the land; and moreover, that his statement, however erroneous, should be conclusive.

Mr. Willcock, Q.C.

30. 31. and 32. A scheme of registration of title without registration of deeds, so as to give the purchaser the title recorded, necessarily involves the investing of the registrar or some officer with judicial authority to ascertain the title conclusively, and thereby the constitution of a tribunal calculated to occasion infinite mischief and expense—for it would not only act in numberless cases against those who could not be heard, being unknown, too distant, or even expected into existence—but it would compel parties to bring forward their claims prematurely, perhaps, unnecessarily, at great expense, and would in most nstances decide in private.

33. A registry of title confined to title acquired subsequently to its commencement would be the shadow of a registry of assurances, and not only proportionately less valuable, so far as it was correct, but highly dangerous, from involving all the mischiefs of inaccuracy. Unless the antecedent title is to remain the subject of investigation it would be, not a registry, but a manufactory of titles, and the most pernicious that was ever established.

I believe that a registry, according to the simple truth of the deeds and facts constituting title, would be most beneficial by way of security, and that it would in progress of time somewhat reduce the expense of investigation of title. But I think that material diminution of the expense of such investigations, and of the transfer of property, depends on different considerations.

J. W. Willcock.

6, Stone Buildings, Lincoln's Inn,
23d October 1854.

Mr. Burrows.

Mr. Arthur Burrows, Barrister (*Conveyancer*).—23*d October* 1854.

1. I have no reason to think that it is much impeded, but I do think that it is rendered more expensive than it ought to be.

2. I have no reason to think that it is either impeded or rendered insecure by such a want, *i.e.*, speaking generally.

3. I think it would to a certain extent.

4. I think the increased facility would be obtained by the knowledge that investigation could be avoided, and thus cheapness and security obtained.

5. There would be considerable expense to intended sellers in original registry, but not when registry once established; to buyers there should always be diminished expense.

6. I cannot give a correct answer of my own knowledge, but I believe that such investigation often causes a large proportion of the expense.

7. I do.

8. Yes, by making the right to hold and transfer, and the actual transfer itself, only on the registry.

9. I think nothing but the absolute ownership should be admitted on the public registry, although interests and claims recognised by existing law should be privately registered to be effectual—meaning by private, open to the officials only. It might, however, be advisable and possible to admit interests sensible to view, as ways, &c., and also ordinary leases, on the public registry.

10. See last answer; but I think no title should be registered without a certain defined retrospective inquiry by competent officials, the exact extent of which I am not prepared at present to indicate.

11. No particular difference strikes me.

12. Yes, but trusts capable of a modified hold on the land itself by private registration. See No. 9.

13. Yes, decidedly. See No. 14.

14. Yes. See No. 13.

15. I think it should be tried, (see Nos. 9 and 12), so as to prevent the registered owner from transferring to the prejudice of the protected interest, after fair notice to the parties interested, and inquiry by proper officials.

16. On the preceding principle, I do not see how limitations and trusts can become part of the public title, or at all part of the title, save as above specified.

17. I think they could be better protected than similar interests in personalty are now. Of course they would lose something of security by ceasing to be part of the land itself; if that security is taken away, then I think they would be "*adequately*" protected, *i. e.*, in proportion to their subsisting importance.

18. Upon the above principle I think the stop must be effectual until properly removed, (see No. 15); any way there must be no transfer on the public registry subject to anything, save as in No. 9; it might be easy, however, to continue any one or more of the interests privately registered, so as practically to make the transfer subject thereto.

19. Subject to the last answer, I think a distinction might possibly be made, but I am hardly prepared to define it.

20. See the last answer.

21. I think it should define the interest according to certain rules.

22. By re-entry on the private registry.

23. The authority of a competent official on reasonable evidence

24. Nothing else occurs to me.

Mr. Burrows.

25. I certainly do; but nevertheless the number must be very small in comparison to the immense number of trusts.

26. See No. 17. I think such vesting the only effectual system of registration, and only "objectionable" so far as it diminishes existing securities.

27. See last answer, and No. 17. I read "unduly" as I do "adequately" and "objectionable" in the above answers. See general observations at the end.

28. I am in hopes not. At the same time I do not see how the system pointed at could be effectually carried out without maps; but I am in hopes that maps on a certain scale, by sworn surveyors, official or otherwise, originally put on the register, with future maps from time to time made with reference to such originals, and with reference to the existing state of the property by like surveyors, after due notice to parties interested and surrounding proprietors, and with provisions for payment of costs of so ascertaining boundaries, &c., might answer the purpose. A public, *i. e.*, general, map, I consider would do no more than this.

29. I think so, to the extent of the last answer, and as the tribunal to which the evidence there pointed at should be referred.

30. I think the chief registrar should be a high officer of the Court of Chancery, with original jurisdiction subject to appeal, like a bankruptcy commissioner; and that such registrar should have considerable legislative powers to determine minor difficulties, if indeed the Act by which he was constituted did not itself remove many of the usual difficulties by a few well considered clauses.

31. Certainly voluntary at first, because I see nothing to prevent the old and new systems existing together, and it should be seen whether the new is likely to be beneficial; as to whether it should then or at any time be made compulsory, see my general observations at the end.

32. I think the public registered title should be unquestionable; as to the rest, see Nos. 9, 15, &c.

33. An unquestionable title for a limited time is better than not having one at at all; but as I think there ought to be an investigation previous to putting any title on the registry, I think such investigation should be once for all.

GENERALLY.—I beg that the above answers may be considered subject to my opinion, that so great a change of the laws, as an effectual registration of title would require, is not needed; but supposing that opinion to be considered erroneous, then I think the registration should be as complete and effectual as possible, or matters will be made worse than before; and in this view I have answered the questions put. I also have not alluded to any possible amalgamation of law and equity, which might materially affect the scheme proposed.

ARTHUR BURROWS.

9, Old Buildings, Lincoln's Inn.
23d October 1854.

Mr. J. Warner.

MR. JOHN WARNER, Barrister (*Conveyancer*).—*24th October* 1854.

WITH respect to such of the questions submitted by the Commissioners as apply, not to the result of actual experience, but to a proposed remedy for certain assumed defects, and which partake of a speculative character, I answer them with diffidence; because the subject on which they have a special bearing is one to which I have not been able to devote much attention. It is very possible, indeed, that any difficulties which I may find in this subject of registration of titles, in my cursory consideration of it, may have been anticipated and disposed of even, in published treatises which I have not had the advantage of perusing, and to which at present I have no time to refer. But although there are some of the questions which I hesitate to deal with for the reason I have stated, I think it better, on the whole, to give such answers as I can to all of them seriatim.

1. My own experience does not lead me to believe that the sale and transfer of land is *impeded* by the necessity for investigating the title on every sale. From various circumstances, independent, as it appears to me, of what may be called conveyancing incidents, an investment in land is regarded as of a more permanent character than those investments which do not alter the legal or commercial quality and incidents of that which is invested. And land, however the facility of transferring it might be increased, could never be dealt with for purely commercial purposes, like money in the funds for instance. The value of all public stock is fixed at any given moment by the market price of the day; and to this is owing the superior facility of transfer which is essential to capitalists who trade with their money, and which, in the case of land, the necessity at all events for a preliminary survey or inquiry to ascertain the value, would alone be sufficient to prevent. I have not in fact found, so far as I have had opportunities of observation on the subject, that either a party wishing to sell or one wishing to buy land, is deterred from doing so by such a consideration as that suggested in the question. I should say that whenever land is offered for sale there are always plenty of buyers (except, of course, in certain states of the money market, when investments of any description can scarcely be tempted by any facilities). If the purchaser thinks about the title at all—which, judging from the little effect conditions specially applicable to the title have in checking a sale, must be very rarely the case—the consideration that the title will be examined, whether satisfactory to him or not, comes perhaps as an afterthought, being preceded by the

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intention of buying. And as to the owners of land, they decline to sell as long as they can hold, from more weighty considerations, I believe, than the prospect of having to deliver an abstract of their title. Many a landowner mortgages three or four times over rather than resort to a sale, although in mortgaging he has to bear the whole expense himself, and in the case of a sale the principal expense would be thrown on the other party; and this must arise from a desire to retain the land. It might be said that under a new system there would probably be more sellers of land in the market. But I have already stated my reason for supposing that the purchase of land could not be resorted to as a mere commercial investment. And investments for the purpose of a temporary income appear to me to be out of the question; because it is of course assumed, with respect to land, that greater facility of transfer would tend to increase the value; and it is notorious that, with all its present drawbacks, land pays a lower interest than any other species of investment.

As regards the question of expense, the answer is palpable. If any course which would be as satisfactory and less costly could be substituted for that investigation of title the necessity for which is assumed now to exist, such necessity renders the sale and transfer of land more expensive than it ought to be; but not if the necessity must continue to exist, because a sufficient substitute for the investigation of title cannot be provided. The question is therefore substantially one of a substitute for the present practice. I presume that a registration of title is pointed at; but this is made more expressly the subject of some of the other questions.

2. I should say that the disposition of land is not impeded by the want of a registry, either of title or of assurances. My reasons for this opinion may be gathered from the answer I have given to the first question. In addition, it may be observed, with respect to a registration of assurances, that if the disposition of land were in fact impeded by the want of such a registration, some symptoms of this might be expected to appear, by contrasting in this particular the register counties of Middlesex and York with other counties. But so far as my own experience goes in every case of an investment in land, the locality is selected without reference to any advantage which a register county might be supposed to have over another. There are, it is true, serious imperfections in the existing law and system of registration; but of these, though professional men are familiar with them, other persons can scarcely know anything. The public, generally, cannot be supposed to be aware of the doctrine of constructive notice, or of the defects in the machinery of registration; all they know is, that there is a registry for lands in Middlesex and Yorkshire.

The instances in which additional security would be practically attained by a registry of titles or assurances, are, in my opinion, very few; no doubt there are some. Still it is desirable to make every case secure as far as may be; but if this were the only question, I should doubt the expediency of establishing a new system, involving radical changes, and to be of universal application, in order to provide for isolated cases of rare occurrence.

3. For reasons I have already stated, I do not think that the *sale* of land would be facilitated by the mere establishing of a public register or record of the title. The *transfer* perhaps might be more readily made, but not to a material extent, in my opinion, unless the establishment of the register were accompanied by considerable alterations in the existing law of real property.

4. The increased facility of transfer which I should anticipate from a registry of title (assuming it to be practicable) would be obtained by simplifying the transfer itself, and also by reducing the investigation of the past title to a few well defined points. Some investigation of the prior title must always be necessary, if it were only an inspection of the registry (whether by the purchaser himself, or by the registrar or his clerks)—unless indeed each successive entry were to be conclusive of itself as to the prior title; but to this there are such grave objections, in my view of the subject, that any advantage to arise from mere facility of transfer cannot be weighed against them. I allude more particularly to the vast judicial power which by such a system would be substantially vested in the registrar and his assistants, and to which I shall have to refer in my answers to some of the subsequent questions.

5. I think that in any saving of expense the seller as well as the buyer would participate.

6. This is a question which the nature of my practice does not enable me to answer.

7. I avail myself of this question to express my misgiving whether I have a clear conception of what is meant by "registry of title"; and I the less hesitate to do so, because the questions themselves seem to show that something more precise is wanting by way of definition. Assuming a registrar to be appointed, what is intended to be presented to him for registration? Is it a title evidenced by documents or other proof, or a mere unsupported claim? I presume not the latter, because instead of promoting economy and security, it would manifestly tend to disturb all titles, if every bare assertion of title were allowed to be entered on the registry. Evidence therefore must be adduced, documentary or otherwise, by the party seeking to register; and this necessarily implies a discretion in the registrar to accept or reject that evidence, which would in some cases be of such a nature as to raise very nice and difficult questions of law. On these, as well as on questions of fact, the decision of the registrar must be final; because the register would lose its value if any entry in it might be made the subject of appeal. Thus the registrar

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would be invested with the highest functions of a supreme court of judicature. This authority would be superior to that of any judge in Westminster Hall, and that without the materials for arriving at a correct conclusion which are afforded in the ordinary courts, for he would have to decide *ex parte* and without an open discussion. This would be a power, the existence of which, especially in one holding the position of a mere registrar, is not only much to be deprecated, but would even be unconstitutional; and it is this consideration which has chiefly produced in my mind a doubt as to the expediency at least of a registry of title. There may be no absolute impracticability, if the object to be attained were deemed of higher importance than any evils which might accompany the system. Perhaps, however, the particular objection to which I have adverted might be in some measure obviated by making it optional with the registrar, or even compulsory upon him to take the opinion of one of the courts on a doubtful point. The difficulty in this case would be in determining what points were really doubtful; and something would always have to be left to the discretion of the registrar.

Another question would be as to a practicable form of entry in the registry, considering the great variety and complexity of interests which may exist in real property. Assuming that every kind of interest, even in the legal estate alone, and without reference to equities, were to be the subject of registration, that is, if the particular nature of the interest had to be specified—even the simplest form of entry which I can conceive would approach very nearly to the registration of an assurance. Perhaps, in order to form a registry of title which should differ materially from a registry of assurances, it might be necessary to confine the entry to one form only, the interest transferred not being defined, in which case the only subject of registration in chief would be the absolute interest or fee simple. But this would be in effect to destroy all other legal interests, as such, and would be so harsh and violent an alteration, not merely of what relates to the transfer of land (the only subject, I apprehend, which the simple question of registration can legitimately deal with), but of the whole system of real property—that to justify it a different ground ought to be taken. It should be first shown that, with reference to other if not higher considerations than those involved in the object of a registry, it is inexpedient, as regards the legal right, to permit the existence of a life estate, or an entail, or an estate in remainder, or a term of years, or any other interest than the absolute fee simple. Otherwise I do not suppose that any one would suggest the annihilation of all estates but one, merely to save some expense and trouble in a transfer. This would be to "make a solitude and call it peace."

8. This question, as well as others relating more particularly to the machinery of a registry, I have difficulty in answering, as the slight consideration which I have been able to give to the subject very little qualifies me for entering into its details. If adequate powers, involving a large amount of discretion and judicial authority, were to be vested in the registrar, I can conceive such a register of title as would be very instrumental in simplifying both the title to land and the forms of conveyance. It might simplify the former, by substituting, in many cases at least, for the examination of a number of document, a new inquiry as to a series of facts lying within a small compass and easily ascertainable; and it might simplify conveyances by rendering recitals and technical forms (what are called in treatises on real property the different parts of a deed) unnecessary. This latter object might of course be effected without a registry. With respect to the usual covenants for title there may be an uncertainty. Some practitioners might still consider them necessary in order to guard against oversight in searching the registry (unless the registrar were empowered to guarantee the title on each successive transfer). It would perhaps be expedient to establish an implied warranty on the part of every person transferring land for a valuable consideration, to a certain extent, which might be defined by legislative enactment.

9. I decidedly think that all forms of legal ownership or property (as distinguished from equitable interests) should be registered in chief.

10. I am not sure that I quite understand what is meant by the present actual and existing title. Taken in one sense, such a title might in certain cases require a retrospective inquiry of some extent. But perhaps a title from the last entry on the registry is meant, for I cannot conceive anything else by means of which an inquiry into former dealings could be avoided. But that would be in effect to constitute the registrar sole arbiter of every title in England, and to such an extensive jurisdiction in such a quarter I have already stated my objection.

11. Perhaps not, especially if the establishment of the registrar were accompanied (as I assume it would be,) by an alteration in the character of the assurances themselves. In even the simplest case of a transfer, *inter vivos*, an entry of the date, the names and descriptions of the parties, a description of the property, and a specification of the interest transferred would be necessary, and the instrument of transfer itself need contain little more. With respect to those assurances where the interest passed is qualified by some condition or otherwise, (as mortgages for instance,) the qualification would perhaps be conveniently contained in a separate instrument in the nature of a defeasance, some provision being made with reference to stamps, so as to prevent any increase in the amount of duty now payable on the single instrument. In the case of some wills, when the construction is doubtful, or when a disposition in one part is modified by something in another part or by a codicil, it is difficult to see how a registration of the instrument itself or of some portion of it could be avoided, unless the registrar were vested with the power of determining the construction and effect of the will.

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12. If all legal interests were admitted to the register, (as I conceive they ought to be,) such a provision as here suggested would of course be unnecessary.

13. As one of the principal objects of the system would be to protect parties dealing with the registered owner, such a provision as that suggested would not, I think, be necessary or desirable beyond that object. So long as the party to whose estate the trust or equity was originally annexed, or those claiming under him as volunteers, retained the registered ownership, I cannot conceive any adequate motive for debarring the beneficiary from all right as against the land, of which substantially he must be considered the owner, and to that extent the provision in question would, in my view of it, be a gratuitous piece of injustice. The case would be different as regards transferees for valuable consideration; it would perhaps be a necessary part of the system that as to them the registry should be conclusive.

14. I have stated my opinion on this subject in my answer to the preceding question.

15. I think that trusts and equities might be so protected consistently (in part at least,) with the other objects above mentioned, by some entry on the registry; because those objects might be considered as in some measure attained, even if the full benefit of the registry were experienced only in the ordinary cases where the land is brought into the market by the absolute owner.

16. This is a question which I am not prepared to answer, it presumes a study of the subject which I have not been able to devote to it. But I very much doubt whether the existing system of settlements can be altogether reconciled with the principle of a simple register of title, (that is, as I understand it, a register which should contain an entry of nothing but the transfer, without defining any interest,) and venture to express an opinion that if the two are irreconcilable, the system of settlements, looking at the important considerations on which it is founded, ought not to give way to any principle of a mere registry. But even in the case of a settlement, perhaps the object might be partially attained by some mode of making such legal estate or interest created by the settlement the subject of a distinct entry.

17. I have already expressed an opinion that all legal interests ought to be the subject of registry in chief. With respect to trusts and equities, it does not appear to me that they would be adequately protected by merely *allowing* the parties interested under them, or others, to take any such proceedings in the registry office as suggested. There are trusts created in favour of infants, of unborn parties, of persons abroad, which could not, of course, be protected by the parties themselves; and, according to my experience, it would show very little knowledge of human nature to suggest that others, having no interest themselves in the matter, would always be found ready to take the requisite steps for protecting such trusts. Perhaps the objection would not apply so strongly to a settlement *inter vivos*, because it might fairly be contended that the authors of the settlement should themselves have a discretion as to entering the trusts on the registry or not; though even this would only hold good during the lives of the settlors. But in the case of a will, a trust is sometimes created without the appointment of a trustee, or by expressions which do not clearly define the trust or the objects of it, or which raise the trust by implication merely; or the trustee named refuses to act, or has an adverse interest. In all these cases, if the beneficiary is not himself competent to act (and indeed even if competent, he might not be aware of the existence of the trust,) it is manifest that no mere *permission* to make an entry in the registry would be an adequate protection of the trust. Such an entry ought, I think, to be obligatory, at all events in the case of a will; and for that purpose whenever a party claims as devisee, the will should be produced to the registrar. This might interfere in some particular cases with the objects of the registry; but I confess that I cannot see why those objects should be made paramount to every other earthly consideration. Some saving of trouble and expense, and even the utmost perfection of mechanism in a registry, would be far too dearly bought at the sacrifice of right and justice.

18. I do not see why the notice of a trust should have the effect of altogether preventing a transfer, if the notice were to be carried on in each successive entry.

19. It will follow from my answer to the preceding question, that I do not consider any such distinction as here suggested to be necessary.

20. I certainly think that all equitable interests should be allowed at least to be so protected. But on this subject see my answer to the 17th question.

21. It might be a convenient mode of dealing with such an interest to enter the name and address merely of the party putting on the distringas or other form of notice, in the title register, with a reference to a distinct register in which the nature of the equity might be specified. In this latter register, which would be in the nature of a register of trusts, it would not be necessary to repeat the description of the land, or to state anything more than the nature of the trust and the parties entitled under it.

22. If the course suggested in the last answer were adopted, the benefit might be secured to persons acquiring the interest, by sale or otherwise, by an entry in the register of trusts. The legal title could thus be kept distinct from that relating to the equities.

23. This is a question on which I feel great difficulty, as in many cases the instrument creating the equity could not be produced by the party claiming to make the entry. Of course whenever the instrument itself is accessible it should be produced to the registrar. In other cases I suppose that the registrar would have to be guided by the ordinary rules of secondary evidence, unless, indeed, he were to be invested with the arbitrary power of

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compelling the production of an instrument on the application of any party claiming to be interested under it.

24. I have already stated the mode of effecting this object which suggests itself to me.

25. A misappropriation of stock may be made either with a fraudulent intent (amounting in fact, though not in law, to embezzlement) or not. I have no reason to suppose that the former kind of misappropriation is frequent; but I have a different impression as to the other. Many a trustee, I believe, who would shrink from what he himself would consider a wrongful breach of trust is led by the solicitation of a beneficiary having a partial interest to lend himself to an undue application of the trust fund, either by advancing it to the beneficiary himself, or by changing the authorized and secure investment for one of a hazardous nature in order to produce a greater income, either case often involving a loss, total or partial, of the trust fund. Some trustees, especially in the trading community, by whom generally an investment in the funds is considered a very bad one, do not seem to appreciate the advantage which one kind of investment may have over another in point of safety; but, on the contrary, sympathize with their beneficiary who is in receipt of the income, and who thinks it very hard that the fund should be made to produce only three per cent. I have known not a few cases of this kind in my own experience.

26. Having regard to the cases adverted to in my answer to the last question, I should think it objectionable as part of a system of registration of title, to vest the registered ownership, equitable as well as legal, of settled land, in trustees. This opinion is not affected by a consideration of those cases where settlements now contain powers of sale; because the circumstances with which a sale of land is now attended form a certain practical protection which would be altogether abolished, if by means of what is called a simple register of title, land were placed on the same footing, with reference to facility of transfer, as stock in the public funds.

27. It appears to me that the security of settlements and trusts would be unduly impaired by their ceasing to bind the land and follow the title as at present.

28. It would be necessary, in my opinion, for ensuring the objects specified, to couple the registry with a public map. Frequently descriptions of the same land vary so much in the different title deeds that extensive evidence is required to connect them; but the title deeds themselves provide a guarantee against the same property being dealt with by different parties. Of course this guarantee would be lost under such a system of registered ownership as that suggested; and without a map there might be several registered owners at one time of the same land.

29. I think that this would be indispensable, for the reason stated in the answer to the last question.

30. This is a subject which I have adverted to in my answers to some of the previous questions. I cannot well conceive how the registry could be made to answer the purpose designed without investing the registrar with judicial authority in respect of the title to the land itself, though of course as regarded the purchase money, when that could be followed, the question of title might be left to the ordinary tribunals. Unless there were a competent authority to decide upon the validity of the claim to register, that which would be registered would be merely an assertion of title. Under such a system the heir at law and the devisee might both register, and in other cases registration by adverse claimants might give rise to great confusion. Again, a tenant for life might register as absolute owner. This, I think, would probably be not an uncommon case. It is well known that in the humbler class of landowners, (and these, owing partly to the establishment of land societies, are becoming very numerous,) the distinction between quantities of estate is not much regarded, if indeed it be understood, and a member of this class in actual possession, although having only a partial interest, might be apt to consider himself as absolute owner, and might register his title accordingly, without any definite intention of committing a fraud. At the same time I should submit that this judicial authority of the registrar ought to be of as limited extent as possible. In all cases of doubt it might be made incumbent upon him to reject the claim to register until the question of title had been decided by one of the superior courts. There must necessarily, as I have already observed, still remain in him a judicial discretion as to the amount of difficulty which would be necessary in each instance to constitute a doubtful case.

31. As such a register would be an experiment (to my apprehension a very formidable one) it would, I think, be advisable to make the registration voluntary in the first instance; and to make it compulsory at some future time in case the experiment were found to answer. This course, moreover, would perhaps have the advantage of preventing too great a pressure of details in the infancy of the system, and of initiating the public in it by degrees.

32. I do not know how claimants and the nature of their rights could be ascertained otherwise than by a regular investigation of the title such as now takes place on a sale. No investigation would of course be satisfactory as the foundation of a warranted or parliamentary title, unless it were a judicial one. But in the first place, I doubt even the practicability of such an investigation, either by any existing court or by one to be established for the purpose—involving, as it must do, a minute examination of all the documents of every existing title, independently of extrinsic evidence as to identity, matters of pedigree, and other facts. I do not either see how an investigation of this nature, *ex parte* as it must be to a great extent, could be made compatible with the functions of

courts of judicature, which are constituted to deal with questions specially raised and argued between litigant parties. One obvious objection to such a course, regarded as judicial, is that the inquiry on which the decision in each case would have to depend could not possibly be conducted in public. And in the next place, it would no doubt be considered highly objectionable that every landowner in the kingdom should be imperatively called upon to produce his title for such an investigation. *Mr. J. Warner.*

33. It follows that in my opinion the provisions of the registry should relate only to the title subsequent to the commencement of the registry, leaving the antecedent title to be the subject of investigation as at present.

JOHN WARNER,

Inner Temple, 24th October 1854.

MR. BRAY (*Solicitor*).—*24th October.* *Mr. Bray.*

1. I CONSIDER that the sale of land is impeded by the necessity for the retrospective investigation of the title.

2. I think that the disposition of land is frequently impeded or delayed for the want of a registration of the assurances deducing the title.

3 and 4. If by a public registry of title is meant a registry in which every one having or claiming an interest in land must, on peril of losing it, enter into such particulars as the Registrar may require, such a registry would, in my opinion, render titles more secure, and would in some measure hereafter diminish the expense of the transfer; but I do not think that it would be so effectual for either purpose as a complete registration of the assurances and evidences of title.

6. I cannot answer this question without knowing more precisely what is included in the expense of a purchase. Supposing the average length of an abstract of title in great and small transactions to be thirty sheets, the expense of investigation would be between 15*l.*, and 20*l.*, and the conveyance as much more, without the stamps.

If required, I could state the expense of strictly investigating numerous titles on the loan of large sums of money. It would be less than the average expense on purchase.

7. Not a perfect registry.

8. In connexion with other alterations in the law it might.

9. 13. I think that the register should contain a notice of every interest or claim which the Court of Chancery would protect, and that no protection which is now afforded against fraud should be withdrawn. There can be no doubt that the Courts of Equity, by opening the door to every claimant, have rendered titles less simple and secure; but it will always be necessary, for the welfare of society, if not for the improvement of trade in land, that fraud should be discouraged by the greatest possible certainty that it will not answer.

A plurality of judges in each Court would give greater firmness and uniformity to their decisions, so that there might not be so many doubtful points in the title to land; but I do not think that their jurisdiction can be safely interfered with in the way suggested; that is, by restricting their power over the land itself in some cases.

10. A retrospective inquiry could only be entirely avoided by conferring what is called a parliamentary title.

11. A register disclosing the history of the title would not be so perfect as a registration of the assurances. It would show the difficulties of the title without furnishing the means of removing them.

25. I believe that the misappropriation of stock by trustees is of frequent occurrence, but not so often involving loss, because the stock always can be, and probably is, in most cases replaced

26. It is, in my opinion, objectionable.

27. It appears to me that it would.

28. I think so.

29. Not indispensable, but expedient.

30. I think that it would not be necessary.

31. Not more compulsory than the conveyance.

32 and 33. I think not. There was little danger in giving a parliamentary title to purchasers in the Incumbered Estates Court, because the titles had been established by mortgages and other incumbrances; but it would not be safe or desirable to give an unimpeachable title to any one who could satisfy the Registrar of the accuracy of the pedigree or the validity of the will or deed under which he was possessed. The strictest investigation would not prevent the occasional exclusion of the right heir or owner; while the numerous landowners, whose title, although sufficient for sale or mortgage under conditions, will not bear a strict investigation, would be in a worse condition than they were before.

No question is put expressly with reference to the saving of time; but I beg to add to my answers, that the chief advantage to be derived by the public from registration would be the greater certainty that the purchaser will pay and the vendor receive his money at the appointed time.

I believe also that a complete registration of assurances would tend to render conveyances more short and simple.

24th October 1854. REGINALD BRAY.

Mr. J. H. Christie.

MR. J. H. CHRISTIE, Barrister (*Conveyancer*).—*24th October* 1854.

1. THE retrospective investigation of title on each successive transfer occasions delay and expense in the sale and transfer of lands; if a safe and practicable scheme be devised for dispensing with such investigation, the delay and expense might be avoided by the adoption of the scheme. While the necessity which the question assumes exists, I am not aware that the delay or the expense is greater than it ought to be.

It will be perceived that the question (from its form) admits only of an hypothetical answer.

2. The practical insecurity in England from want of registration is not, I think, great, but there is no doubt a theoretical imperfection in any system of law (including the holding of property by documentary title) where there is no register of the assurances. A register may be imagined which would facilitate the transfer of property, and render the ownership more secure, but I know of no register which answers those ends; and the difficulty of framing a satisfactory scheme may be inferred from the failure of the able men who have tried the task to produce a scheme the utility of which has been generally recognized.

3. As a register of title, contradistinguished from a register of assurances, is something which is new to the law of England, it would have been well if the Commissioners had given some explanation of the meaning they attached to the terms "register of title." If in such a register the *res gestæ* in relation to the property are recorded, it seems to me that such record would most naturally refer to the assurances. In the meantime I am unable to form any idea whether a register or record, the principles and plan of which I am unacquainted with, would or would not afford the facilities the question refers to.

4. This last answer will show that I am not in a position to give any answer to this question.

5. Assuming a scheme of registration which renders a retrospective investigation of title unnecessary, expense would be saved both to seller and buyer, but the main sources of expense would of course be left untouched, namely, the auctioneer's charges, forming, I apprehend, more than two thirds of a vendor's expenses, and the stamp duties, forming probably, on an average, a like proportion of the purchaser's expenses.

6. Some notion might be formed on this subject by an examination of a sufficient number of solicitors' bills of costs: without some such preparation any answer would be made in a great measure at random.

In a case mentioned by Lord St. Leonards in the House of Lords, a solicitor's bill (including every legal expense except the *ad valorem* stamps,) for investing 1,060,000*l.* in, I think, eighteen purchasers of various amounts, was something less than 3,000*l.* I should, at a venture, say that at least 2,000*l.* of this amount arose from the matters to which this question refers.

7. In my opinion a register ought to be a register of the assurances. Without denying the practicability of forming the other kind of register, I cannot, without more exact notions than I possess on the subject, say anything as to the expediency of adopting it.

8. I must see the proposed plan of registry before I can give any answer.

9. In my opinion a register will depart from principle, and fail in what ought to be its primary object if any form of ownership of property be excluded. Equitable and reversionary interests are precisely those which stand most in need of a register.

10. If I understand the question rightly "the present actually existing title" means the present actual existing ownerships or interests. If, indeed, by legislative authority an entry of this kind were made binding on all men, there would be neither occasion nor pretence for looking to anything anterior to the entry in the register. But I think that such a piece of legislation would be the boldest of which we have heard. I venture to doubt if the difficulty of framing such an entry as is here supposed is felt as strongly as it ought to be, considering the state of the titles of a large portion of the lands in England.

The ownership of an estate may in one sense be considered as a unity, but it is a very complex unity. According to my own experience there are many estates, a complete and exact statement of the different interests in which (including of course the liabilities of parts to charges which affect the parts only, or primarily affect parts and may or may not affect other parts, or the whole in subordination to other charges, and all other endless specialties which such a statement must include,) would not be framed by a person of experience and ability without the labour of many weeks, and after all, the existence of some error or imperfection in the statement would be far more probable than its exactness and sufficiency.

11. A register of assurances at length, discloses the whole title so far as it is documentary; a register of assurances by memorial indicates the existence of the assurances which persons investigating the title are to peruse. In either case the mind arrives at its own conclusions as to the effect of the assurances; in a register, where the assurances are not given or referred to, the conclusions of fact and law only would be stated. This would differ from a register of assurances and, in my opinion, differ in all respects for the worse.

12. I cannot venture to say what would be necessary or desirable in this, which seems to me, possibly from my imperfect apprehension of the views of the Commissioners, to be altogether undesirable.

Mr. J. H. Christie.

13. Generally the interests excluded from the register, or to the knowledge of the existence of which the register does not lead, ought not to affect a title derived through a registered owner. But the generality of this position would require some qualification; for example,—if an estate were purchased by a trustee with trust money, and the fraudulent trustee sold to a party who had full notice of the fraud—a court of equity could hardly be shut out from decreeing a conveyance by such last-mentioned purchaser to the *cestuique* trust of the money.

14. I think it may be desirable, *as far as practicable consistently with principles*, to relieve the title, by making the claim personal only against the wrong doing trustee.

15. This would for the time be a registration of the trusts and equities. I think they ought all to be at all times registered.

16. If it be proposed to enter on the register a statement of the actual existing and potential interest in the land, without reference to assurances, the present system of settlements, as well as other parts of our system, and the habits of dealing with land, would make the framing of the proper entries a laborious task, and occasion great liability to error. The idea of a registered vendor which has been frequently suggested, is by no means inconsistent with the present system of settlement, though a register confined to the single object of exhibiting a trustee of a power of sale would be a very imperfect institution.

17. 18. 19. 20. 21. 22. 23. and 24. All these questions suppose the adoption of a system which I venture to think ought not to be adopted, and as to the specialities of which I cannot usefully make any suggestion.

25. I am inclined to think mis-appropriations by trustees, particularly if they have some partial beneficial interest, are common. I refer to cases of trustees treating the trust funds as their own. The case of mis-dealings by trustees, without any view to their own benefit, is not infrequent, particularly by investment, at the instigation of the tenants for life and for their profit, and by loans of the trust funds upon improper and inadequate securities; still as cases of breach of trust usually become the subject of professional advice, it is possible that I or any other lawyer may be led to form an exaggerated notion of the frequency of such cases.

26. My impression is, that the risk of a registered vendor trustee of land making a sale with a view to misapplying the purchase money would be comparatively small.

The sale of land must always be a very different affair to the sale of stocks, or calling in money. The purchasers of land, even by private contract, would under any system of law have the land looked at and valued, and communicate with the tenants; in fact, the sale would always be more or less notorious before its completion. I do not mean that, if such a system were established, the *cestuique* trust ought not to be provided with some means, such as distringas, to stop the trustee from completing any intended or suspected malversation—but to express my opinion that a sale of the land with a view to a mis-appropriation of the money would be rare.

27. I am not disposed to think that such a system as is indicated by this and the preceding question would necessarily introduce any material element of insecurity. I think the powers given over the land ought not to be exercisable by a single trustee.

28. I am not prepared to say that the accuracy and security referred to in the question, can be attained only by means of a public map, nor, till it be explained in what way the map is to be used, how far it would conduce to these objects. But independently of registration, the Tithe and Enclosure maps of England and Wales and the Ordnance maps in Ireland are highly useful for conveyancing purposes.

29. If no reference be made to assurances, it is obviously necessary that the register should expressly, or by reference, specify the land to which the statements thereof are intended to relate.

30. If the original entries in the register be made binding, it will be necessary for Parliament to vest in the chief registrar, or in some other officer, power to adjudicate as to the entries to be permitted to be made.

31. If there be a register at all, it ought to be compulsory.

32. This would be infinitely desirable, and with a view to getting rid of the future investigation of anterior title, is indispensable; but it seems to me out of the question to confer this force upon the entries in the register on the strength of any investigation before an officer of the register; and I am unable to make any useful suggestion on the subject. I have already adverted to the difficulty attending the framing of such entries; and any one who has any considerable experience of the habits of the people of this country in dealing with land, must know that it is almost impossible to exaggerate the difficulty in question.

33. This would not be sufficient if more were attainable. The present generation will take little interest in advantages so remote, and in which they cannot look to participate. But I am unable to suggest any means (unless the principle of the Irish Encumbered Estates Act were adopted, which does not at present appear to be contemplated,) by which purchasers can be relieved from the investigation of the anterior title. This is the more to be regretted, as Parliament and the public have been for some time in a fools' paradise, from expecting some great and beneficial change—in fact, to be able to buy and sell their estates with the like facility as they buy and sell railway stocks; and the disappointment will be proportionally great, if this heavy and costly impediment remain untouched.

J. H. CHRISTIE.

24th October 1854.

Mr. Jessel.

MR. JESSEL, Barrister (*Conveyancer and Equity Draftsman*)—24*th October* 1854.

1. I CONSIDER that it is impeded and rendered more expensive than it ought to be by this necessity, but I also consider that this necessity arises from the nature of our system of real property law, admitting as it does several tenures, and enabling parties to create such a great variety of limited interests. It appears to me that without such an alteration of the law as would reduce all tenures to one, and effectually limit the powers of disposition at present enjoyed by landowners, no system of mere registration will render the transfer of land either cheap or speedy, although much may be done for the security of purchasers and mortgagees.

2. I think that the disposition of land is not impeded from the want of a registry, so far as regards the sale of it. It is notorious that land may be sold with almost any special conditions as to title, and I believe the experience of most professional men will coincide with my own, that the eviction of a purchaser is so exceedingly rare as to justify this confidence on the part of the public. This being so, in my opinion, although a registry would add to the security of a purchaser, it would not practically facilitate the sale of land. With regard to the disposition of land by way of mortgage, I think it clear that such disposition is both impeded and rendered insecure by the want of a registry. Although it is not difficult to obtain money on a first mortgage where the mortgagor is enabled to hand over the title deeds, yet it is almost impossible, except under peculiar circumstances, to obtain an advance by way of second or third mortgage; and the many instances in which mortgagees have been defrauded have induced cautious lawyers, as a general rule, to dissuade their clients from advancing their money except on a first mortgage.

3. I do not think a public register or record of the title would facilitate the sale of land. I mean in this answer, by a register of title, a register of the true ownership of the land, as distinguished from a register of title in which the true ownership does not appear but where some other person than the real owner appears as owner. I consider the register of any party as owner who is not a true owner, so as to enable such nominal owner to convey the land, to be not merely a register but a substantial alteration of the law as to the transfer of land, and as such not to be within the scope of this question.

4. and 5. I consider a true register of the title as distinguished from a register of assurances to be impossible. No careful practitioner would venture to state, for the purpose of registration, the ownership of an estate held under a complicated title, otherwise than by setting out nearly at full length the various uses, trusts, and powers contained in the settlement, wills, &c., and the various facts, such as births, deaths, intestacies, &c. affecting the title. This would amount to a short abstract of title, and would be, substantially, merely an imperfect register of assurances; consequently the expenses of the purchaser would be increased by the necessity for searches and registration, and those of the vendor would not be diminished, as he would have to furnish a copy of the registered title, which would be about equivalent to the present abstract.

6. The expense of investigating a title does not in any way depend upon the amount of the purchase money. I should think the average amount of the costs of investigating the prior title in an ordinary purchase would be from 30*l.* to 40*l.*, but no doubt the expenses on small transactions are in many cases diminished by the parties dispensing with the investigation of the greater portion of the prior title.

7 and 8. I think not. See the above answers to Queries 3. 4. and 5.

9. In my opinion, if the register of title were to be established at all, every ownership should be put upon it. I consider that the owner of a limited estate should be enabled to sell or mortgage his land with at least the same facility he now possesses. If the register does not enable him to do this, the register, so far from assisting owners of land (the greater part of which is in this country under settlement,) would be productive of great injury to them, especially by making it more difficult for them than it now is to obtain money by way of mortgage.

10. I think if a register of title as distinguished from a register of assurances were established, it would be utterly useless to the present generation, unless it exhibited the present actual title, and if this could be done, a retrospective inquiry into former transactions might be avoided; but this result could in my opinion be accomplished only by the decree of a competent court, declaring the title before the first entry was made upon the register.

11. I think it would not materially differ.

12 and 13. As I am of opinion that all forms of ownership should be put upon the register, this of course would not be necessary.

14. In my opinion this would be very undesirable, and would amount in some cases to a confiscation of the estate itself.

15. I think this, for many reasons, impossible.

16. In my opinion, the existing system could be continued only by every alteration in the register being made upon the certificate of a judicial officer, a course which would entail great delay and expense; and this appears to me to be a fatal objection to any register of

Mr. Jessel.

title as distinguished from a register of assurances. I consider the proper object of a register to be the security as well of present as of future owners of all interests in lands; and I think any system of registry of nominal owners would protect purchasers or mortgagees alone, at the expense of all other parties interested in the land, and that such a system would only be tolerated in countries where the legislatures do not hesitate to deprive the owners of land of those powers of settling it which the landed proprietors of this country have always considered to be one of the most valuable attributes attached to the proprietorship of land, and as affording some compensation for the expense and trouble entailed upon them by our complicated system of real property law.

17. to 23. I think no system of distringas, caveat, or stop would be an effectual protection, and therefore it becomes unnecessary for me to attempt to answer these questions.

24. The only mode I can suggest is a complete register of the ownership of all the interests in the land.

25. I believe such instances are frequent.

26. If the register were a complete one, then in all cases where trustees have power of sale they would appear on the register to have such power. It should be remarked, nevertheless, that in ordinary settlements the trustees cannot exercise the power of sale without the consent of the tenant for life for the time being, who being in general the head of the family, and having the greatest interest in preserving the family estate, effectually checks arbitrary dispositions by the trustees, while they on the other hand prevent the receipt and misapplication of the purchase money by him ; and in any system for vesting the registered ownership in trustees, provision ought to be made for a similar protection.

27. I think that the security of settlements and trusts would be unduly impaired by their ceasing to follow the land. In fact, I believe it is notorious that while there is little or no difficulty in disposing of limited interests in land, there is very great difficulty in disposing of similar interests in settled stock at their fair value, and that until the establishment of companies formed for the purpose of purchasing such interests, reversionary interests in stock were almost unsaleable ; and that even now they do not fetch their full value, by reason of a sum being deducted by all companies as an insurance against the costs of litigation and the ultimate risk of loss on account of the defalcation of the trustees and the impossibility of guarding altogether against the fraudulent suppression of a prior sale or mortgage.

28. I think this would be necessary in towns, but I am not prepared to say that the same necessity exists in regard to country properties.

29. and 30. Undoubtedly. Of course the registrar must be either a judicial officer himself or act on the certificate of a competent tribunal, which must have power to limit a time for all persons to bring in their claims, and to decide finally upon the construction and legal effect of all instruments relating to title.

31. I think if established at all it should be compulsory.

32. I think it should confer a parliamentary title after a similar investigation by a competent tribunal to that which takes place in the Irish encumbered estates court.

33. This question appears to me not to apply to a register of title, strictly so called, which of course would show the actual title, but to a registry of assurances, and this registry must apply only to future assurances. However, I am afraid that the result would be that its beneficial effects would be felt almost entirely by a future generation, while the present would be saddled with all the expense, delay, and other inconveniences which are the necessary accompaniments of any system of registry.

I have answered the above questions concisely, because I have assumed that the object of the Commissioners was rather to ascertain the opinions of the profession than to have submitted to them a treatise on the subject developing the reasons upon which such opinions are founded.

G. Jessel.

Lincoln's Inn,
24th October 1854.

Mr. Hadfield.

Mr. Hadfield, M.P.—24*th October*, 1854.

[In reply to the questions sent by G. W. Sanders, Esquire, Secretary to the Registration of Title Commissioners, and by their desire, in his circular, dated 28th September last, (received 14th October instant), relative to the registration of title, as distinguished from a registration of assurances, the following is submitted by George Hadfield, Esq., M.P. : viz.:]

These questions appear to be framed with reference to certain preconceptions suggested to the Registration of Title Commissioners, and I do not consider it expedient to follow the propounders through a series of questions framed on opinions which I have no

Mr. Hadfield.

adequate information of. I shall therefore state generally my views on the question of registration with reference to—

(1.) A registration of assurances.
(2.) A registration of title.
(3.) A registered proprietorship.
(4.) The practical workings of the proposed distringas.

(1.) A registration of assurances already obtains in two counties, and its practical working is known there, and whatever removable defects attend the system as practised in those counties being removed, a trial of the system as so amended may be made there for a sufficient period before attempting any extension. No additional arrangements will be required, and this course of action will be safe and unobjectionable.

Moreover assurances themselves may be much shortened if professional remuneration be made to depend on that. I do not think a registration of assurances is wished for in nonregistering counties, or that any inconvenience has been experienced for want of it, at all commensurate with the delays and expense that would be naturally occasioned by granting it.

(2.) Registration of title, as distinguished from registration of assurances, seems impracticable. How can the title be put on the registry with all its minute and constantly changing details of parcels, of easements, and of all interests, legal and equitable, affecting it? Who is to deduce the title? What is to be his authority? How is it to bind? Is a proprietor's title to depend upon the Registrar's judgment? And is such judgment to be final, or subject to appeal, and to whom? If final, how enormous the registrar's power and responsibility! What result is to be expected under any circumstances, except to bring a man's title into question without necessity and without consent? In what way could all the titles in the kingdom now existing be put on the register? Registration of title presents, as I think, no advantages which registration of assurances may not have, and has many disadvantages peculiar to itself.

(3.) The expediency of *registered proprietorships* depends mainly on the fact whether frauds by trustees of money or stock are more or less frequent than frauds from concealment of title; and without doubt they are much more frequent, and, in fact, probably at least twenty times as frequent. Frauds of title are very rare; frauds of trustees of money or stock are of common occurrence in some shape or other. Why multiply opportunities for some of the most frequent of frauds in endeavouring to avoid those which are most rare, and which also can be otherwise avoided, *e. g.* by registration of assurances?

(4.) As to the *proposed distringas*. How will this work? probably to bring into the Court of Chancery all *settled* titles, for it is one thing to give a power of sale guarded with consent of tenants for life and other precautions, and another thing to place the property in the absolute disposal of such trustees as registered proprietors. Probably therefore almost all settlements would be guarded by distringas, and I suppose the effect of that would be, either to tie up the property or to compel purchase moneys on a sale to go into the Bank of England, as under the Lands Clauses Consolidation Act. Would this tend to simplify transactions? On the contrary, even now a sale by trustees under a power in a settlement, however guarded, is found much simpler and cheaper than a sale under the Lands Clauses Consolidation Act with payment of purchase money into the bank, and this fact seems conclusive of the question.

In one word I consider the only feasible registration to be of assurances; and as to this, I think it should be amended and perfected as far as possible in the present register counties before it is extended to other parts of the kingdom; and when so extended, it must be altogether local (*i.e.* separate and distinct for each separate county or local district) or it will be, in my opinion, altogether a nuisance. As I have already stated, I do not think that the want of this mode of registration is felt in the nonregistering counties.

My opinion is that the expense of keeping a registration and the temptation to fraud. would be greater whether of assurance or of title than under the present practice.

So far as came to my knowledge during a very long professional practice, the instances of fraudulent concealment or of fraud in any way in connexion with real property have been few, and in several particulars might be corrected by law, for the security of *bonâ fide* purchasers.

I think the doctrine of notice, express or implied, of liability to secret settlements, and the like should be altered in several particulars, and that judgments should have the same effect on real estate, and no more, as on personal estate, and should not be a charge on realty, as against purchasers, until enforced by execution.

The forms of conveyances might be made shorter, and the necessity for investigating title might be limited to a shorter period by enactment.

It is, in my judgment, very desirable that legal representation to real estate should be granted in cases of actual or supposed intestacy; in order that a *bonâ fide* purchaser may be safe, in dealing with the supposed heir at law, in every case of presumed intestacy.

GEO. HADFIELD.

Victoria Park, Manchester,
24th October 1854.

MR. MAISTER (*Registrar of Deeds, East Riding*).—*24th October* 1854.

Mr. Maister.

1. Yes.
2. Yes.
3. Yes.
4. In each of these ways.
5. To both buyer and seller.
7. I do not think it would be practicable.
25. No.
28. I consider that a public map would be impracticable, but that it would be desirable for every deed to be accompanied by a plan.
29. No.
31. Compulsory.
33. I think it would.

J. MAISTER,
Registrar of Deeds and Wills
for the East Riding of Yorkshire.

Beverley, October 24th 1845.

MR. EDEN (*Solicitor, Liverpool*).—*25th October* 1854.

Mr. Eden.

1. I ASSUME that a retrospective investigation of title is necessary, but think that the expense of such investigation is greater than need be, from the difficulty of arriving, with certainty and despatch, at the requisite evidence.

2. To some extent, the disposition of land may be impeded or rendered insecure by the want of a registry. At the same time, it is questionable whether increased facilities for the transfer of land would add much to the frequency of transfer. Land may remain on hand for years, not on account of the great expense of transfer, but because purchasers cannot be found as they can for stock, shares, or produce, for which there is always a market.

3. I am of opinion that the sale and transfer of land would eventually be facilitated by a public register of assurances, with index of title.

4. I think that a register of assurances, with index of title, would tend to diminish the expense of transfer, by facilitating a reference to the evidences of title, by diminishing the length of recitals, and by doing away with the necessity of covenants for the production of deeds, by rendering unnecessary (if maps be adopted) evidence of identity, and by procuring an easy reference to facts material to the title.

5. It would be a saving both to buyer and seller.

6. I am not able to state what proportion, but the proportion is in many cases very considerable.

7. I doubt whether "a registry of title" is practicable or desirable, as distinguished from a register of the deeds and assurances under which the title is derived.

8. The forms of conveyance might be much simplified, with or without a register.

9. See reply to No. 7.

10. I do not see how a retropective inquiry into former dealings and transactions can be avoided.

11. A register disclosing the deduction and history of the title would be less satisfactory than a register of assurances, inasmuch as reference must be made to the original documents, unless the entry upon the register is conclusive evidence of their contents and effect.

12, 13, 14. In a simple registration of title it might be necessary that all forms, except those admissible on the register, should be of the nature of trusts only; but I think with a register of assurances parties might be left at liberty either to register trusts and equitable interests, or not. If omitted to be registered, such equitable interests should not affect the title as regards parties dealing with the registered legal owner.

15. Unregistered trusts and equities might be protected by means of a distringas or caveat, so as to prevent the transfer of the land other than subject to the protected interest.

16. The existing system of settlemants can scarcely consist with a simple register of title, but would not be interfered with by a register of assurances.

17. It appears to me that settlements, trusts, and equities might in many cases be adequately protected by means of a distringas or caveat, and by allowing, if required, the subsequent registration of the trusts.

18. A transfer might be permitted, subject to the interest protected by the distringas.

19, 20. All equitable interests should be allowed to be protected by distringas.

21. The distringas should state briefly the nature of the claim, under what document it arises, and in whose custody such document is; it should be signed by the claimant, attested by a solicitor, whose duty it should be to satisfy himself as to the bonâ fides and probable grounds of the claim, which would be a check upon irrelevant claims; a copy of the claim should be served on the party or parties having the legal title, to whom also a notice might be transmitted from the registry by post; and, unless cause were shown to the contrary, the claimant should, under order of the Registrar, be entitled to have a notice of the distringas entered upon the index of title. A distringas or caveat would be registered in like manner as assurances, but in a separate register, and a properly arranged index kept, to be searched for a period not exceeding twelve months, after which the

Mr. Eden.

distringas should be void, unless entered in the index of title, or renewed by a fresh entry in the index of caveats.

22. The distringas being once placed upon the index of title would remain till legally withdrawn, and should the interest protected thereby become the subject of sale or transmission, the party taking such interest may register the document under which he claims, with a reference to the page of the index of title where the notice of distringas appears.

23. His own statement signed by him and attested by a solicitor.

24. I cannot suggest any other mode than the distringas of protecting equitable interests.

25. I consider the instances of misappropriation or misdealings by trustees with stock or money to be comparatively rare.

26. It would be objectionable to make it compulsory upon parties to vest the entire ownership of settled lands in trustees. In some cases the plan might be adopted with advantage; in others not.

27. To some extent the security might be impaired; but the object of keeping the equitable interest out of sight would frequently be defeated by the distringas and by the equitable dealings with the interest protected thereby, for I conceive that a purchaser would be bound to see that a distringas is withdrawn by a party entitled to withdraw it.

28. I think it would be most desirable to couple the registry with a public map, and to have plans on every conveyance, with a reference to the locality on the public map, but leaving the parties at liberty to adopt that map or not. It is probable the public map (of which printed copies at a moderate cost might be furnished, as of the ordnance survey,) would be adopted in all cases, except where there was some manifest inaccuracy, or some alteration of the fences or of other features of the locality. In cases of land laid out for sale in lots, the owners might, if they considered it desirable, have the land mapped out by a local surveyor appointed by the registry office, and the copy of the plan deposited as supplemental to the general plan.

29. It is for the parties, and not for the registrar, to ascertain the accuracy of the description and the identity of the land; nevertheless, upon questions of identity the public maps and plans would often be invaluable.

30. I do not see any occasion to invest the Chief Registrar with judicial authority, except to decide upon questions arising out of claims to have a distringas entered in the index of title, or be discharged.

31. Registration should be compulsory; that is, essential to the legal title.

32. The registration could not confer a warranted or parliamentary title without giving to the Registrar powers which should only be vested in the highest courts of judicature.

33. Registration should not affect the antecedent title.

JOHN EDEN,
Liverpool, 25th October 1854.

In a subsequent communication Mr. Eden says, "I may be allowed to mention that I "wrote my answers without being aware of the evidence taken before the Committee of "the House of Commons on the subject, which I have since had the opportunity of "perusing. Had I read the evidence, the frame of my answers would have been some-"what different, that is, I should have objected more strongly to a 'Registration of "Titles' as contrasted with a 'Registration of Assurances.'"

Mr. R. Mac Donnell.

MR. RANDAL MAC DONNELL, Barrister (*Conveyancer and Equity Draftsman*).—*25th October* 1854.

1. I THINK it is impeded, and rendered more expensive.

2. I think it is impeded, and to some extent rendered insecure.

3. I think so.

4. I think that all the three means of obtaining increased facility referred to in this question are attainable by a public register.

5. I think there would be a saving in the first instance to both seller and buyer, but that most of the advantage of the diminution of expense would be in the end obtained by the seller.

21. I think the distringas must necessarily be a registration of the person claiming some equitable right, and not of the right itself.

25. I think there are many such instances.

28. I think it would be necessary.

29. I think an identification of each separate piece of land indispensable, but that sufficient accuracy of description to effect this object is all that is needed.

30. I think it would be neither necessary nor desirable that the Chief Registrar should be invested with any judicial authority.

31. I think the registration should be voluntary at the outset, but that land once brought under the system should continue so. There would be less difficulty in extending the system of registration to all land after it had been brought into satisfactory operation by voluntary means than in making it compulsory in the first instance.

32 and 33. A warranted or parliamentary title conferred at the outset of registration must be founded on some judicial or quasi judicial examination of title. I think that to make such an examination an indispensable preliminary to admission to the register would greatly narrow the benefits of registration. The expense alone of the examina-

Mr. R. Mac Donnell.

tion would exclude nearly all small properties, and the trouble and expense combined would exclude many others. Defective titles would necessarily be excluded; and I do not see why a defect in the title to land anterior to the introduction of registration need deprive that land of the benefit of an improved mode of transfer subsequently. I think that a registration founded on ostensible or possessory ownership should be permitted in the first instance, and that on such a registration the antecedent title might be left to be the subject of investigation, until by lapse of time or otherwise that should become unnecessary.

At the same time, I think that a means of obtaining and putting on record, when it was desired, some judicial or quasi judicial approval of the title to land up to the time at which it was brought upon the register would be a highly beneficial feature in the system. It seems to me that there will be found great difficulty in giving to such an approbation the effect of an absolute warranty, and that a degree of security nearly equal in reality, and in the estimation of purchasers, to such a warranty, may be obtained without encountering this difficulty.

All that the most cautious purchaser, under the present system, can ascertain is, that the title he accepts will bear a complete examination under good professional advice. It is notorious that such a purchaser is exposed to little or no want of security. The evil to him lies in the enormous expense, delay, and trouble involved in the examination of title. I think that if a purchaser under a registration of titles could be satisfied by formal evidence that the title up to the first registration had been found sufficient on the most complete examination, under good professional advice, to which it could be submitted by the most cautious trustee, he would deem himself secure without further investigation.

I should propose to enable persons interested to obtain an investigation of the title to land up to its first registration, to be conducted in the same way as the investigation of title by the Court of Chancery which now takes place upon an investment of trust monies. The Court appoints and instructs its own conveyancing counsel; and if the deeds and evidences of title were to be brought in upon oath, and examined by an officer of the Court, and the possession shown to be in conformity with the title, there would be as little opportunity of deception or collusion as upon an investigation of title by the most cautious individual purchaser. When the title was approved a certificate to that effect would be issued, and be put upon the register in connexion with the land to which it related. The certificate should specify in a schedule the deeds and documentary evidence on which it was founded. Upon any future dealing with the property before the old title had become immaterial by lapse of time, the purchaser would have to see that these deeds and documents were accessible to him, but would, if he relied on the certificate, be relieved from every other inquiry. Facilities might be given for the deposit in the registry office of deeds and other documents referred to by the certificate.

Although the existence of what may be called a Certified Title would, like a decree in a suit for specific performance, leave the rights and remedies of persons claiming adversely to the title unaffected, I think that considerable efficacy might be given by law to such a title, and that it would derive still greater efficacy from the estimation in which it would be held by the public. It seems to me, that after land has been upon the register for a very much shorter period than the term for which titles are now deduced, say for twenty years, the existence of a certified title might preclude investigation by purchasers into the title anterior to the first registration. In the meantime, I think that a stipulation by a vendor on the sale of land that a certified title should preclude investigation into the title anterior to the first registration would be generally acceded to, and would, even in small transactions, attract purchasers by the belief that they would acquire a title that could be relied on without the expense and delay of an investigation. In illustration of the disposition of purchasers to dispense with examinations of title on any reasonable grounds, I may refer to the facility with which the lessor's title is assumed to be good from public repute in dealings with valuable leaseholds, and to a practice which I am informed is not unusual in Ireland, by which the vendor procures the opinion of some well-known counsel on his title, and stipulates with purchasers that the title thus approved shall be accepted.

I do not see why the expense of an investigation, for the purpose of obtaining a certified title, need much exceed the expense of an equally complete investigation conducted in the ordinary way. Where land held under one title was sold in numerous lots, a single investigation of title of this kind would be much cheaper than a separate investigation by each purchaser for himself. And if power were given upon these investigations of title to obtain the opinion of the Court on doubtful questions, this mode of proceeding would be an advantageous substitute for a suit for specific performance in cases in which the only questions in dispute related to the title. The titles which are approved by the Court in the investment of trust monies (including the monies paid in by railway companies), in which the certificate would be obtained with little or no extra expense or trouble, would help to give the system a trial.

RANDAL MAC DONNELL,
Teignmouth, 25th October 1854.

MR. E. N. AYRTON, Barrister (*Conveyancer*).—26*th October* 1854.

Mr. E. N. Ayrton.

1. THE sale and transfer of land, if it meant no more than the terms themselves express, would, I consider, be both impeded and rendered more expensive than it ought to be, by the necessity which now exists for the retrospective investigation of title on the occasion of each successive transfer.

If the sale and transfer were a mere change of ownership from the seller to the buyer of so many productive acres, we might readily conceive the expense limited to the commission of a surveyor and auctioneer and the cost of the simplest evidence of transfer, as in the case of railway shares.

But the now existing necessity referred to shows that under our law much more than such a simple change of ownership is involved in a sale and transfer of land. The sale and transfer have an operation co-extensive with the circumstances out of which that necessity arises. These circumstances are, the many rights that may exist in land; as, for instance, rights of way, water, and mining; and the many estates and interests which may be had in the land,—estates for life, in tail, jointure, portion terms, charges, powers, in possession or remainder, vested or contingent.

To the purchaser, the land gives not only a specific enjoyment, but the means of creating all those rights, estates, and interests, at his pleasure, within the law; and therefore at the same time, the sale and transfer of the land to him negatives the existence of any of them outstanding in any other person against him.

What expense, then, ought, or ought not, to be incurred in an investigation of title necessary to give a sale and transfer of land this its operation under our law, is the practical inquiry.

Under this aspect of the question, the expense is not a matter of a per-centage on acres. The expense of preparing a long abstract, showing the rights, estates, and interests in, it may be, a few acres of land, during a period of time sufficient to satisfy the purchaser that he will have secured to him the full operation of a sale and transfer of them; the expense of verifying the abstract with the deeds; of the perusal of it by counsel; of the completion of the evidence of title; and finally of drawing and preparing the draft and deed of conveyance, involving perhaps long recitals to show the estates and interests conveyed or got in:—all these expenses are means to the special end of giving to the sale and transfer its due operation. And if these expenses are incurred to this end by one purchaser, so when he becomes a seller must they be again incurred, for every purchaser must protect his own interest; even if the seller bought under a sale in court, the purchaser from him must satisfy himself that all proper parties were bound by the decree.

The expenses therefore arising upon the investigation of title on each successive transfer cannot be said to be greater than they ought to be, unless it can be shown, either that the true operation under the existing law of a sale and transfer of land (giving the purchaser the specific enjoyment and the power to create all those rights, estates, and interests which the law allows, and negativing any such enjoyment, rights, estates, and interests in any one else) can be effected at less expense, or, that this operation itself of a sale and transfer of land may, by some change in the law, without interfering with the substantial benefits of the ownership of land, be so modified as to render necessary a less expense.

Whether either of these alternatives be practicable, can only be ascertained by working out their details.

It may turn out, upon inquiry, that there is a limit to the division of land, beyond which the expense of a sale and transfer must bear an undue proportion to the value of the piece sold; that is, a limit consistently with the preservation of the substantial benefits of ownership in sale and transfer.

As to the first alternative, namely, whether under the existing law the expense is greater than it ought to be.

What is the present practice? When a sale is proposed, the solicitor and counsel for the seller endeavour, by terms and conditions of sale, to limit the investigation of title to the shortest possible period—far short of that to which the investigation would otherwise extend. Indeed, frequently where the property to be sold was recently a portion of a large estate, upon the sale of which the title is known to have been approved, the terms are such, that the former approval is made to serve as a basis of title in the resale of the portion.

The abstract of title, as prepared by the seller's solicitor, has rarely any redundant matter, it generally requires further development.

The buyer's counsel makes and insists on the requisitions only which are absolutely necessary to secure to the purchaser the true operation of the sale and transfer.

In handling the title, he considers it his duty, with a view to future dealings with the property, to simplify as much as possible. By means of separate deeds, he keeps the devolution of the title clear of collateral matters, or of mixture with the title to any other property included in or affected by the transaction.

And so in settlements, by means of powers of sale, the title of a future purchaser is prospectively disconnected with the trusts of the settlement, and rendered quite independent of them.

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Dispositions by deed or will, for the benefit of wives, children, and relations, are commonly made in the shape of trusts for sale; and the future title is thus relieved from lengthy trusts for the beneficiaries.

In mortgages, powers of sale are given to the mortgagee, such that to a purchaser from the mortgagee the latter stands in the position of owner of the fee.

Having regard then to the nature of the operation of a sale and transfer of land under the existing law, seeing that the expense of the sale and transfer is the means to the end of securing that operation, and knowing that solicitors and counsel hold it to be their duty and make it their study to shorten the investigation of title, and simplify title as much as possible, I do not consider that, under the existing law, the expense of a sale and transfer is greater than it ought to be.

In conveyances, there may have been some years back a tendency to overload with expressions meant to guard against every possible mischance of title; but, so far as experience has since suggested, that such precautions may practically be lessened, the forms of conveyancing have become simpler and shorter.

Any diminution of the expense of the sale and transfer of land, as under the existing law, may then be safely left to the practice of the profession itself; and can, I think, so only be safely or effectually carried out.

There remains the other alternative; whether by a change in the law the operation of a sale and transfer may, without interfering with the substantial benefits of the ownership of land, be so modified that a less expense shall be necessary for such sale and transfer.

I say, without interfering with the substantial benefits of the ownership of land, for, in my judgment, this lies at the bottom of the whole question of expense.

The present dealings with land have grown out of the wants and conveniences of society. The endeavour to retain land from generation to generation in the same family, without either tying it up for a length of time prejudicial to the commerce of life or depriving the possessor of his due enjoyment, and yet protecting the estates of unborn issue and making provision out of the land for the family—the endeavour too to continue in the enjoyment of land by the aid of the capitalist, who, if his interest and principal be paid, does not interfere with an enjoyment unsuited to his own preoccupations—these are the endeavours of the landowner to maintain himself in a social and political position, the stability of which (apart from special or exclusive views or aims) must, from the local relations involved, have an important bearing on the stability of our social and political state.

If it be said, that our conveyancing system retains strong traces of the feudal system, it must be admitted also that our social and political system retains still stronger traces. The one is a consequence of the other. But, in truth, lawyers have from the earliest times moved as freely as they could under the iron trappings of the old military system, and, as their own ingenuity, the judge, or the legislature has enabled them, have thrown off those trappings piece by piece.

The legislature has recently much assisted the conveyancer, but any change in the law which should interfere with the substantial benefits of ownership for the sake of diminishing the expense of sale and transfer, would be a sacrifice of the end to the means.

It is, however, I think possible, that, without such interference, the expense in question may be diminished by a legislative extension of those means to which I have alluded above, as employed by conveyancers to simplify title—I mean the creation of powers of sale.

Such powers assimilate the dealings with land, for the purposes of sale and transfer, to conveyances in fee. If all conveyances were of that character, the investigation of title would, of course, be very much simplified; but, so long as the creation of partial estates and interests in land continues, in any cases, unaccompanied by a power of sale, the investigation must in all cases be carried back, to guard against claims by persons possibly entitled in remainder or to incumbrances.

We are led then to consider whether some system might not be adopted, by which, as between seller and buyer, all conveyances might be as in fee; whether there might not always, where the conveyance was not simply in fee, be a power of sale over the land, exercisable by parties to whom alone the purchaser should look (subject to certain consents), while all partial estates and interests, legal and equitable, in the land, would be matters between the holders of the land, the beneficiaries, and the trustees of the powers, and not affect the purchaser otherwise than in the shape of consents.

But it would be essential that such consents should be personal consents; that is, be given by the persons in virtue of their personal description, as sons, wives, or daughters, and not in virtue of their estate or interest.

As part of such a system (or, indeed, as an independent means of diminishing expense), the theory of mortgages and incumbrances might be brought into accord with the practical objects of them.

At present, a mortgagee takes a conditional conveyance, which brings after it transfers by conditional conveyances, with, perhaps, a reconveyance, or foreclosure. But the practical object of a mortgagee is, not to get an estate in the land, but marketable value as his security.

Persons lending money on the security of land, or having a charge or incumbrance on it, and, generally, all persons standing in a merely pecuniary relation to the land, and not

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in one of tenancy or ownership, might have their position defined in such a manner by the legislature that they should have a common remedy by sale.

The practicability of such legislative changes must, as before observed, be tried by the attempt to work them out in detail.

I do not attempt to pursue the detail here, as my object, thus far, is to indicate how the question of expense in relation to the sale and transfer of land presents itself to my mind, and how only, as it appears to me, such expense can be properly said to be greater than it ought to be.

2. Whether the disposition of land is impeded or rendered insecure by reason of the want of a registry of the title to the land, or of the assurances deducing the title, depends upon the question, whether there is any such impediment or insecurity that a registry, in its office of a registry, will remove.

I use the expression, in its office of a registry, that I may guard myself against any confusion between registration and the thing proposed for registration; or between the advantage of registration and that of such a simplification of the thing to be registered, as will admit of its registration. Title or assurance might be brought into a state fit for registration, and yet registration itself be unnecessary or even disadvantageous. The person and the title to be registered might be ascertained with the greatest degree of ease and security, and yet registration of them be inexpedient.

Whatever be the matter to be registered, it must be shaped before it can be registered, and if the matter in such shape can be made available in the form of document of title, to be in the custody of the owner and as the warrant of ownership, there may be no want of a registry in its peculiar office.

The peculiar office of a registry, it is apprehended, is to afford means of information, more or less public, of the matter registered.

Is then the disposition of land impeded or rendered insecure by the want of means of information of anything which it concerns the purchaser to know? Does it commonly or frequently happen that from fraud, negligence, or accident on the seller's part, any matter of title does not come within the reach of the purchaser, as by the suppression, destruction, mislaying, or loss of documents?

The answer, from personal experience and the experience of reported cases, will, I think, be in the negative, and rather that any impediment or insecurity springs from the abundance of the materials which the purchaser's counsel is enabled to require and obtain, and from the legal doubts and difficulties, the errors and inadvertencies, arising upon these materials, on the part of the purchaser's counsel or solicitor.

But if it be implied that there is any absolute impediment or insecurity attending the disposition of land, such an assumption would invite a denial.

There are no doubt the impediment of the expense and delay necessary to secure to the sale and transfer its true operation, and the insecurity common to all transactions.

Thus, no system can be theoretically more insecure than that of checks on bankers or of dock warrants. Any clerk of common dishonesty and ingenuity might, in a moment, cause a loss of thousands; yet the system is not absolutely insecure.

No want of a registry is felt in the case of checks and dock warrants.

The reason I take to be, that, honesty, carefulness, and vigilance are the rule among men of business,—fraud and negligence the exception.

So it is in dealings with land.

3. In answer, therefore, to the third question, whether the sale and transfer of land would be facilitated by a public register of title, it may be urged, that a public register would have the effect of imposing upon all the honest and regular transactions in land, expense, delay, publicity, and risk on account of the exceptional cases of fraud and negligence.

For every system of public registry must entail expense and delay under three heads: first, the expense and delay of examining the register; secondly, the expense and delay that must arise out of questions on the registry itself; thirdly, the expense and delay of registering the sale and transfer of the newly acquired title.

The expense would be particularly felt in the case of small purchases at any distance from the registry.

As to publicity; it seems to be generally forgotten, that, to a landowner, his dealings with his land are as much his private affairs as dealings with money by a depositor at a banker's.

The landowner's own income, his wife's pinmoney and jointure, his daughters' portions, his sons' advancements, his charges to supply his own emergencies, are not matters for the public eye.

The public have no reason for knowing these things, as the feudal lord had reason for knowing who was his tenant to do him service, and that the tenant was of ability to do the service.

The risks, too, attendant on a public registry are great, from carelessness, ignorance, or dishonesty of clerks. Mistakes in the names of persons and properties are easily made. The danger of being tampered with to falsify the register cannot be disregarded.

Dealings with land, instead of depending on the average honesty, intelligence, and care of the community, would thus lie at the concentrated risk of the mercy of a few officials.

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It is quite conceivable that, in such a place as London, a systematic use might be made of the register, for the benefit of fortune-hunters, sharpers, designing tradesmen, and money-lenders.

Add to this, that the opportunity would be afforded to any unprincipled attorney of assailing the landowner through flaws in his title.

Again, is it politic, or would it facilitate the commerce in land, to identify all the titles in it with a government institution, open to popular attack and subject to the pressure of government exigencies?

If it be answered, that the intention would be, to establish a public register on so simple a plan that no opportunity would be afforded for these evils, or many of them, then, it may be admitted that the less a register discloses or the less it interferes the less harm it will do. But, the question being, generally, whether a public register would facilitate the disposition of land, I have desired to show that a register, in its office of a register, by its inherent evils themselves, and by making land an undesirable property, has a contrary tendency.

I am thus led to the conviction that a public registry, so far from facilitating the sale of land, would, to the extent to which it might form part of any plan for simplifying title, or diminishing expense, or making a purchaser more safe, be found a specific drawback upon any such plan, so serious as to peril the efficiency or practicability of the plan itself.

4, 5. My foregoing answers render answers to these questions unnecessary.

6. I am unable to answer this question, further than by observing that, having regard to the operation of a sale and transfer of land, there does not appear to me to be, practically (although there may be arithmetically), any average of the expense of the investigation of title and matters connected with it.

7. A registry of title does not appear to me to be distinguishable from a register of the deeds under which the title has been derived; for I am unable to regard title otherwise than as the interpretation of the assurances.

The interpretation might be made upon an abstract of the assurances; but, however it be made, it would only be the conclusion of the individual who peruses the assurances or the abstract of them.

Therefore, until a competent jurisdiction decides upon or declares the title deduced, it does not seem possible for any purposes of right, to view the title separately from the assurances.

8. It will have been gathered from my previous answers, that I do not think that a register of title would be instrumental in simplifying generally the title to land and the forms of conveyance.

9. With regard to the forms of ownership to be put on the register, if any such simplification of title as suggested in the answer to the first question were found practicable, the ownership on the register would be the fee, if the owner were so seised, or if there were no owner in fee, then the power of sale alone would appear in the register with a specification of the persons to consent to a sale, such specification being by name or personal description of marriage, birth, or the like, and not by estate or interest.

Thus the registers already existing would be made ancillary to the general register of title.

But, I would observe again, the simplification which I have suggested might be made equally effective without any register of title.

10. It would not then be essential to the purposes in view, to exhibit only the present actual existing title without the history or past deduction of it.

Under such a system as I have shadowed out, there would be a retrospective inquiry to see that the fee had been conveyed in due succession and the powers of sale exercised with the consents prescribed.

But unless conveyance be deprived altogether of its character of transmission, and unless a tortious effect be given to some formalities that shall create an estate in the purchaser, although the seller had none in him, it is not easy to conceive a present actual and existing title separately from the deduction of it. The title is the thing as deduced. The estate was in the last purchaser, and was in his seller before him, and so up the successive steps of the title. The present is the same estate as that person had who is at the root of the title. It is his estate that the present title exhibits.

If title be deprived of this character, and some ceremonies are to have the effect of giving to the purchaser an estate in the land, although the fee or a less estate is really in another party—if, in effect, land is to be transferable, as goods are by dock warrant—the substantial enjoyment of it, the benefit of ownership, will be perilled; for the person who, under the present system, would have been the substantial owner, will, under a system that separates the existing title from the deduction of it, either lose his estate, or at best involuntarily exchange his estate in the land for an interest in the purchase money.

This would be a sacrifice of the end to the means, for the end of all dealings with land should be to effect and secure the enjoyment of it by those whom the owner has pointed out as the parties to enjoy it.

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Any law that should interfere with this enjoyment, in order to facilitate the transfer, must at the same time neutralize the very object of transfer, namely, the enjoyment of the land by the party to whom it is transferred, and by his family, his friends, or his grantees.

If the deduction of title be not exhibited, the effect must be to make the land tortiously convertible into money, and to ignore the social and political incidents of land in which the present system of conveyancing is rooted.

11. If the register should disclose the deduction of title, it would not, under our present law, differ, I think, from a registry of assurances.

But if the law were such that all conveyances that were not conveyances in fee should give a power of sale with consents (if the grantor thought fit to protect parties interested), the deduction of title would differ vitally from a registry of assurances.

For, as all such consents would be, as above proposed, of a personal character, and not ostensibly in virtue of estate, the estates and interests created by the assurances would not appear in the registered deduction, but only the successive conveyances in fee and powers of sale and consents.

12. It would not be necessary, as part of such a system, to provide that all forms of ownership, except those admissible on the register, should be of the nature of trusts only. Neither legal or equitable interests need be interfered with. The grantor or settlor could prescribe any consents (by description of person) that he might think fit, for protecting such interests. If he failed to prescribe them, such omission would be construed as a declaration that the power of sale should be absolute to bind the parties interested.

13. As part of such a system, therefore, as has been suggested, equitable interests or trusts would neither require the protection of the register (except indirectly through the prescribed personal consents of the beneficiaries), nor otherwise affect the title of the registered owner.

14. Whether such equities and trusts should become personal confidences only, enforceable personally against the registered owner, might be left to the discretion of the settlor through the instrumentality of consents in the part of the beneficiaries, such beneficiaries being always denoted for the purpose by name or personal description, and not in virtue of the interests or trusts.

But having regard to the present practice of giving powers of sale without any consent in the part of beneficiaries, who have no holding but only a pecuniary interest in the land, the law might provide that all trusts of a pecuniary nature, as to raise portions, should in themselves be personal confidences merely, affecting only the person having the power of sale.

The great distinction appears to me to be between persons having estates enjoyable in the land, whether legal or equitable and whether in possession or remainder, and persons having pecuniary interests only in the land as jointresses or portioners.

The former should, I think, continue to have practically a title to the specific enjoyment of the land (whether through the indirect means of consents or any means that would not bring their estates and interests upon the market title on the register): the latter should be practically regarded as interested in the land only as a valuable commodity.

As to the latter, therefore, the land might be looked upon as stock in the funds.

But, it will be asked, how can unborn tenants of the land give their consent? To this extent, a consent (if prescribed) might be dispensed with. Such a tenant would generally be protected by the consent of a tenant for life. In other cases, the exchange, on behalf of an unborn person, of an interest in land for an interest in money (assuming that it would not be laid out in land again), would rarely be of any social or political importance. There might, however, on behalf of an unborn tenant, be some consent prescribed by the assurance.

According to the power of sale usual in settlements, the interests of unborn tenants are not represented by any consent on their behalf to an exercise of the power.

15. If trusts and equities were directly protected on the register, so as to affect a purchaser, I should expect that, in course of time, title, instead of being in the present convenient form of an abstract, would be in the inconvenient form of a register, without simplification.

16. Nevertheless, the existing system of settlements might be continued, consistently with the principle of a simple deduction of title or register of title.

For the limitations which now form part of the title might practically, though indirectly, remain part of the title, by the necessity for the prescribed consents of the parties interested. The persons to consent being (it should be borne in mind) indicated always by personal description.

The difference between the consent of a person by a personal description, as by his name, parentage, or relationship, and the consent of such person in virtue of his estate or interest, as the tenant for life for the time being, lies at the foundation of such a plan as I have glanced at for the simplification of title, and if need be, for registration.

While the one consent would, in most cases, involve a search of the marriage, baptismal, and burial registers only, the other makes necessary a complete investigation of estates and interests in the land.

The manner then in which the existing system of settlements might be continued would, as before mentioned, be by means of a power of sale to overreach all the estates and interests under the settlement.

Such power would be exercisable with the consents of such persons, for the time being in existence, as should be by personal description designated by the setlor.

The putting on and off of bars to such consents, according as the estates of the consenting parties might have been aliened or incumbered, or not, would be matter between the trustees, the consenting party and his alienees or incumbrancers. The purchaser from the trustees would be bound merely to see whether the consent was actually barred on the face of the title (as by endorsement on the settlement) or not.

The interests of jointresses, portioners, and persons having charging powers, or standing in a pecuniary relation only to the land, to be practically regarded as interests in the purchase money only; so that no consents would, in fact, be prescribed in respect of them, and they would not affect a purchaser, though he had notice of them.

As part of such a system the creation of terms, to secure jointures or charges, would cease. Instead of such terms, the trustees might have powers of sale, without consent, over specific portions of the land. Such powers would be absolute, as between the trustees of them and purchasers from the trustees; but, as between the trustees and the tenants under the settlement, they would, of course, be exercisable only in the shape of mortgage.

17. If, on the contrary, settlements, trusts, and equities retained their present shape, they would not, I think, be adequately protected by allowing the parties interested under them or others to put a distringas caveat or stop upon the register, or to take some other proceeding in the registry office of a similar nature.

Such a mode of protection implies the party's apprehension of an intended sale. Even with the most public notification of an intended sale, a sale might, in case of the party's absence or infirmity, or of his being artfully kept in ignorance, or of other circumstances, be made without his apprehension or knowledge.

The evil of such a notification of a man's private affairs may be noticed in passing.

To avoid the risk of a sale without the knowledge of a party interested, his stop should be imposed in the creation of the power. It is part of the power.

Everything operating to check a sale should, in my judgment, be upon the title, as part of it. Nothing short of this can, I apprehend, afford adequate protection to settlements, equities, and trusts.

18. If the plan of distringas caveat or stop were adopted, it ought to have the effect of altogether preventing a transfer; for, if the transfer were made subject to the interest protected, the register could scarcely be preserved in the requisite degree of simplicity.

In that case, the register would, in a short time, be so incumbered with distringas upon distringas, that the same investigation of title as at present would become necessary to ascertain the right to have the distringas on; and in addition, the distringas itself would become a part of the title.

It may be said that no one would buy a property with a distringas on, and that before sale the title would be cleared of distringas. But practically this would not be so; for it would be known that the distringas showed no defect of title.

Although, however, in order to an effective system of registration, the distringas ought to prevent a sale, it may be well to consider whether a system of making title by registration, and at the same time of protecting a counteracting title by distringas on the register, is not unsound in principle.

Under the present system, all the interests in the land are part of the title. The seller is supposed to sell, and so to represent before the buyer all these interests. The manner in which they are dealt with in the transfer to the purchaser is mere matter of conveyance. Thus, as regards the buyer, the seller is the only other party to the transaction.

But if title be made in any manner by the register separately from the interests to be protected by the distringas, and so to be thrown into a position adverse to that of the seller, the distringas party becomes a third party to the transaction.

Instead of the seller getting in this interest, as a matter between himself and the party interested, the latter will place himself in conflict both with seller and buyer.

Questions will arise between them as to the right to put on and continue the distringas, as to the cost and damages entailed by delaying a sale assumed to have been made adversely to the distringas party, and as to matters arising out of the necessity thus thrown on the claimant to protect himself on the register.

At present the seller is the acting party; he must arrange and get in all interests as parts of the estate he sells. But under a distringas system, the necessity for active defence, and for an antagonistic position, is from the beginning thrown on all parties interested in the property, besides the registered owner.

The party interested must even step forward to stop a sale which may never be made.

The sale, when made, instead of being a sale of all those interests themselves into which the fee is split up, will be a kind of sale to be stopped by them.

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The register, by thus protecting the interests, gives them an independent and adverse character. It makes on itself a title to stop against another title also on it to sell.

One important consequence of forcing a beneficiary, or party interested or supposing himself so to be, to take the initiative, and actively to protect himself by distringas, would be at once to bring into litigation many points of title, which are now arranged between the seller and buyer by an indemnity, or by retaining or setting apart some of the purchase money. At present the claimant is not affected by the sale; he need not move; the vendor makes no attempt to disturb him. The claim is wisely left by the claimant himself to sleep, because he knows that he can enforce it against the purchaser, as well as he could against the seller. The purchaser is safe with his indemnity. At length the claim is no more heard of, or is barred, or is disposed of by events.

A distringas system, on the contrary, forces the claimant publicly to assert his claim and to defend his assertion.

19. Some distinction might be made between interests which should prevent a transfer, and those which should not, but should only affect the purchase money.

Estates enjoyable in the land might be distinguished from pecuniary interests in it, as jointures, portions, and charges.

In the latter case the distringas need not operate to prevent a sale, or affect the land in the hands of a purchaser, but only to compel him to pay the purchase money in some particular manner, as into one of the superior courts.

20. Thus by the one or the other effect of a distringas (either to affect both seller and buyer, or the seller only), all equitable interests might be protected.

21. The form of the distringas on the register should, it is apprehended, be as simple as possible, and therefore only state the name and address of the distringas party.

But, as the effect of a distringas would be very important, the seller and buyer should have the greatest facility afforded them for ascertaining the interest which the distringas was put on to protect. It would therefore be proper that the distringas party should leave with the registrar a declaration of his interest.

Here, at the outset, begins the conflict raised by the system of distringas.

22. If the interest of the distringas party were transferred by sale, or otherwise than by act of law, the distringas proceedings would, I fear, have to be renewed in respect of the interest tranferred, in order to avoid the danger of a transfer of the benefit of the distringas itself, which would be a transfer of a right to stop a sale.

Any doctrine of distringas running with interest would tend much to complicate the system.

23. But, whatever be the form of distringas, or the mode of transferring the benefit of it or the right to it, it would certainly be a stop on a *primâ facie* title made by the register. Judicial authority would therefore be requisite to entitle a person to put on a distringas. And such authority should be based upon evidence of a *primâ facie* interest in the distringas party, or, in default of such evidence, upon the affidavit of a competent and disinterested person coupled with some surety to abide any award in respect of damage caused by the distringas.

24. The delay, expense, and conflict of a system of distringas might, I would suggest, be avoided, and equitable interests and trusts be protected by some such system of consents as I have before sketched.

Such consents being personal, title, deducible in its simplest shape, would continue to be what it is now, and what, unless land be wrested from its social and political bearing, and reduced to the level of a mere productive commodity, title must, I conceive, always be, namely, the devolution of a continuous estate, right, or power.

But, I may be allowed to remark again, that I do not propose to carry out these objects by a registry, or think a registry expedient or advantageous for the purpose. I venture only upon a simplification of title, leaving title to be evidenced by private documents, as it is at present.

Such an extension, however, as that above proposed of powers of sale to all land not conveyed simply in fee will considerably increase the number of cases in which money comes under the control of the trustees.

25. This leads to the inquiry whether the misdealing of trustees of money is frequent.

There are scarcely means of judging of the number of cases of misdealing, in proportion to the whole number or amount of sums in trust. But that of the number of such trusts as come under the notice of a lawyer cases of misdealing should form a considerable proportion is not surprising, when it is remembered that the object of bringing a trust before him is often to procure a remedy for breach of it.

On the whole, however, I consider such instances of misdealing neither frequent nor numerous.

26. So that, having regard to such cases, and to the effect of the powers now usually inserted in settlements and mortgages, it is not, in my opinion, objectionable, as part of a system of registration of title, to vest the registered ownership, both legal and equitable, of settled land in trustees, subject only to the liberty given to beneficiaries of protecting themselves by distringas.

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My objections, which extend to the whole system of registration of title, rest on the grounds which I have already endeavoured to show.

27. Keeping in view the distinction between the estates and interests enjoyable specifically in the land, and those which represent only a pecuniary relation to it, it does not appear to me that the latter would be unduly impaired by their ceasing to bind the title and follow the land. At the same time, it appears to me, for the reasons I have given, that they should not depend for their efficacy, as against the land, upon acts and forms external to the settlements. It would be better that they should not have any such efficacy, unless the settlor, by prescribing consents in respect of them, or by creating partial powers of sale, thought fit to secure them in the land generally or specifically.

But it does appear to me that estates and interests enjoyable specifically in the land would be unduly impaired by their ceasing to bind the title, and depending for their efficacy against it on acts external to the settlement.

Trustees have an influential position that would, in many cases, unduly deter the holders of such estates or the parties interested from taking any such active adverse step external to the settlement. Practically, the trustee might control the ownership of the land.

Frequently too, as before observed, a sale might be made under circumstances that would leave the holder or party interested in ignorance altogether of the sale.

To rest the protection of estates and interests enjoyable in the land in external acts and forms would be, it seems to me, to sacrifice the enjoyment of land to the form of transfer.

For these reasons, I think that such estates and interests should always remain part of the seller's title, and not be enforceable against it, as it were, by external acts.

But I do not mean that they should directly, and in the shape of estates and interests, be part of the title, but indirectly, as in the shape of personal consents, not discovering to a purchaser the estate or interest itself of the consenting party.

28. For the purpose of ensuring accuracy in the registered title, and for the security of purchasers, a public map does not seem to me to be necessary.

For ordinary geographical purposes, where a personal inspection is not made of land or would be insufficient for ascertaining positions, distances, or boundaries, or in cases of public revenue or tithe income, where government or a single tithe owner is interested in lands comprising many separate properties, or where the public or numerous persons are interested in one property, a map of a public character is expedient and necessary.

But in the case of the sale of an estate, the land is within the personal inspection of the seller and buyer or their surveyors, and, excepting as regards boundaries, they are the only parties interested in the description of the land.

As to internal quantities and particulars, the seller and buyer satisfy themselves each by measurement, or are content with some survey previously made. Each has or makes a map. So far, public maps would be quite unnecessary.

A public map would be of use only as between the estate sold and the adjacent properties. But here again there is no occasion for a public map, for the boundaries are generally sufficiently marked by hedges, ditches, walls, or other landmarks.

If the boundaries be doubtful they must be settled before they can be delineated in a public map, but when settled, they could be defined by the usual landmarks as in other cases.

Indeed, the construction of a public map would render necessary a present judicial decision in every case of doubtful boundaries. This alone would be a serious inconvenience.

In all cases a public map would entail the expense and delay of a comparison of the visible land with the delineation in the map.

Every alteration, whether of boundaries or of the internal quantities of arable, pasture, and wood, must be recorded in the public map.

Further, a public map must be not only geographical, but, if it is to be conclusive on title, it must show all rights of way, water, mining and other rights, parcel of the land—all, in fact, that are termed easements, advantageous, and appurtenances, now or heretofore enjoyed by lands in other lands.

There must therefore be present litigation to settle all such questions where there is any dispute.

There appears to be nothing in the present system to require so formidable a remedy as a public map.

Now, land is bought by its names and alleged dimensions and its boundaries; it is at the time of the sale generally presented more clearly to the buyer's eye by a map prepared by the seller.

The question between seller and buyer is, whether there are certain fields of certain names, dimensions, and boundaries, held under the title made by the abstract. These are the things sold. This must be determined on the spot. A public map will not satisfy the buyer on the point unless, at the same time, it guarantee him the return of any purchase money he may have overpaid for arable or pasture, or acreage, in fact found wanting.

When the purchaser has satisfied himself as to the tangible thing bought, a map or picture will present it more clearly to his eye. But there seems to be no advantage in

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uniting the map or picture with those of all the other estates in the kingdom, and making these united maps or pictures public.

Any supposition that such a public map would be an advantage appears to be founded on the idea that a purchase could be made in the map as convertible into land, much as the purchase-money may be paid in notes convertible into gold.

29. If a registry were established it might be confined to matters of title only, leaving the land itself to be described and identified as at present. The title would be to the land as described by the register, which would carry the matter as far as an abstract of title does at present.

30. The authority which the chief registrar should have must depend, I apprehend, on the intended effect of the registry.

If title (beyond mere priority from priority of registration) is to be made by the registry, and, again, estates and interests are to be protected by the registry against such titles, the registry will be of a judicial character, and the chief registrar must have judicial authority himself or act ministerially under the orders of a judge.

As the questions that would arise before the registrar would substantially, I think, be the same as those now brought before the superior courts, it would produce less change if the registrar exercised a merely ministerial office.

The formal acts of registration should, in my judgment, be kept distinct from the right to perform them.

The due performance of such acts, and the efficient keeping and use of the registry, would be the special care of the registrar and constitute his duties.

31. The answer to this inquiry, whether the registration should be voluntary or involuntary, must also depend much on the particular objects of the registry.

Should the registry be intended to be conclusive on title, then, having regard to the novelty of the institution and the difficulties in working its details, also to the large amount of litigation that, by an involuntary or compulsory system, would at once be rendered necessary to clear up existing doubts in title and land, and having regard to the indifference of landowners to any benefits of registration, the safer course would appear to be that the registry should be voluntary.

Should it be shown that agriculture, or the social and political relations of landownership, or any public land interests, suffer for want of a registry, or, on the other hand, that landowners as a class think that they would be benefitted by a general registry, the registry might be compulsory. But no such facts appear hitherto.

32. Lastly, inasmuch as registration could not, as against all parties interested, confer a warranted or parliamentary title, unless estates enjoyable in the land were to become liable to an unauthorized conversion into money, and unless all monies received upon a sale or a dealing with land were paid into some court or special jurisdiction, to be paid out only upon a judicial decision of all questions of title now in doubt or dispute; and inasmuch as a parliamentary title ought not to be conferred unless the title of those who otherwise would have an estate enjoyable in the land be in such a complicated and hopeless state as to defy the resources of private conveyancing and dealing, and so in the public interest to justify the sacrifice of the rightful owner's enjoyment in the land, for the purpose of restoring the land to commerce (as in Ireland); and inasmuch as it is a sound principle of general application, that any parliamentary protection to take care of interests which the individual is able to take care of himself, and is in the daily habit of managing without injury to the public, is equally injurious to Government and the individual, casting on the one incompatible responsibilities and weakening the independence and energies of the other, it would, in my opinion, be highly detrimental that the registration should confer at the outset (or at any time) a warranted or parliamentary title.

33. The provisions of the registry should therefore relate only to the title subsequent to the commencement of the registry, leaving the antecedent title to be still, as now, the subject of investigation.

And contrary to the implied expectation that, by lapse of time or otherwise, such investigation would become unnecessary, I do not see how, unless a warranted title were conferred on the occasion of each successive sale and transfer, the purchaser could, without an investigation of the antecedent title, know what estate the vendor was actually selling or transferring to him.

Any such successive warranty of title or any such title without investigation would, as I have before remarked, be inconsistent with the enjoyment of the substantial benefits of landownership, and the maintenance of the social and political interests with which those benefits are in our country identified. The end of sale and transfer would be sacrificed to the means.*

E. N. Ayrton.

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* See outline by Mr. E. N. Ayrton, of Statutory provisions for carrying out the above plan, Appendix, Part C.

Mr. PYNE (*Clerk to the Board of Copyhold and Tithe Commissioners*).— *30th October* 1854. *Mr. Pyne.*

As the circular which has been forwarded to me from the Registration of Title Commissioners appears, for the most part, to have been framed with the design of eliciting from members of the profession opinions upon matters connected with conveyancing, and as the information which it is in my power to offer in reply is of limited range, and in some degree special in its character, I beg permission to be allowed to confine my attention to such points in the commissioners' questions as fall within the compass of my peculiar experience. For the same reason I trust that I may venture to disregard the numerical order of the questions, and proceed at once, according to my own method, to the subjects which I shall have to comment upon.

(A. 7.) I think that the period for a registry of assurances as distinguished from a register of title has passed away, and that the former system is too cumbrous for the present day. Within the last twenty years, changes affecting land have occurred in a direction, and upon a scale of magnitude, which could not have been anticipated; and analogy would lead us to conclude that the future may not be altogether barren of similar innovations. A single railway with its branches traverses a hundred parishes, severing and appropriating the lands which lie along its course; its termini in London and the populous towns, displace masses of buildings which, if removed to the country, would form towns of themselves; at the points from which its most important branches diverge, and around its various stations as they approach the metropolis, other towns spring up, or villages are expanded into towns; and after its completion, the surplus lands which it eliminates, have to be gathered and disposed of throughout a network of lines, which if extended into one, would stretch across the island. In the county of Lancaster alone, 235 parishes or townships maintaining their own poor have railways passing into or through them; and in one instance (Preston,) six different railway companies have acquired land in the same parish.*

There is now before me an official document relating to a purely agricultural township in Cambridgeshire, in which the Eastern Counties Railway Company have acquired, for the purposes of their line, property containing 139 acres, 3 roods, 29 perches. This quantity of land consists of a combination of small pieces carved out of seventy other properties, every one of which belongs to a different owner. This single transaction would therefore require the registry of at least seventy distinct conveyances; and as the lands conveyed to a railway company, as well as the surplus lands which it reconveys to the public, are held by a kind of parliamentary title, no compensation in the shape of security could accrue in such a case for the expense of registration.

The various benefit building societies which of late years have been established, afford another instance of the magnitude of the interests which a registration of assurances would injure. It has been asserted that upwards of 2,000 of these societies exist in England. In the "Building Societies Directory and Almanack" for the present year, 1,074 of them will be found inserted, with the names of their respective officers; and of this number, 114 are entered under the designation of "Freehold Land Societies." This latter class of Societies, as well as the freehold land branch added by way of supplement to some of the previous societies, are both of them a recent development of the original scheme of building societies proper, and are so rapidly increasiug in numher and in the extent of their business as to constitute a peculiar feature in the landed system of the country.

One of the freehold land societies called "The National" is already so far advanced in its operation as to have issued 87,920 shares, and purchased more than a hundred landed estates. The character of these estates, and of the allotments into which they have been divided for re-sale, will be best understood by the maps of several of them, which I venture to transmit to the Commissioners, and which will be found to contain besides much useful information. It will be seen from them that the price of the several allotments varies from upwards of 50*l.* down to the small sum of 6*l.*, and that the price includes also the expense of conveyance. It is doubtful whether a registry of assurances would afford any advantage whatever to the owners of these little properties. They have implicit confidence in their titles, which are simple, and not likely to be embarrassed by entails, jointures, or other family charges; and even on the occurrence of a mortgage, a simple receipt for the sum advanced, indorsed on the mortgage deed, re-vests the property in its original owner. On the other hand, no system of registration of assurances which has yet been suggested, could embrace the multifarious transactions of such societies, without imminent risk of involving them in ruin.

When the Real Property Commissioners recommended the establishment of a general registry of deeds and instruments relating to land, they were acting under the impressions produced by the census of 1821. The public have now before them the results of the census of 1851; and during the interval, the population of England and Wales has increased one-half. The inhabited houses have increased in a still greater proportion, the numbers being

In 1821 - - - - -	2,088,156
And in 1851 - - - - -	3,278,949

* See "Return of all the Parishes in England and Wales into which, or through any portion of which any Public Railway passes," &c., ordered by the House of Commons to be printed 5th August 1853.

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It may be assumed then, that in this direction alone within the last thirty years, the national wealth has been augmented by the addition of 1,200,000 new houses, in addition to those which have replaced houses decayed and destroyed. Very much of the benefit thus derived owes its existence to the enterprise and skill of individual builders, whose speculative operations are already sufficiently interfered with by law charges; and as the dealings with house property are more frequent than with cultivated land, and the pecuniary interest involved in each transaction is of comparatively limited amount, it is not, I think, overstating the case to assert, that the expense of registering every assurance affecting this creation of modern industry would prove a public detriment. Thus the railway, the building society, and the census of 1851, all come in aid of the arguments which previously existed against the formation of a general register of assurances.

On the other hand, I think that a register of title might be instrumental in simplifying both the title to land and the forms of conveyance; but in what manner these results are to be produced, it will be my endeavour to show in the sequel of these remarks.

In the meantime I proceed to the consideration of one or two other preliminary questions.

(Q. 8.) Whatever be the system of registration adopted, I am decidedly of opinion that in the first instance it should be either entirely voluntary, or tried compulsorily within only a limited district. If a register were required to operate at once upon all the assurances or titles throughout the country, before the Registry Office could have properly matured its plans, or tried its rules and methods by the only efficient test of experience, I feel satisfied that the pressure upon the registrars would be so great, and the errors so numerous, that the system must speedily collapse. For the proof of this assertion, I would beg to refer to the petition of the Incorporated Society of Attorneys, Solicitors and Proctors against the Registration of Assurances Bill of 1853. They state, that in the event of such a law passing, "they think that they may safely assume that 300,000 deeds will be "annually registered." The reasoning which follows this remark, applies forcibly to the present question; for should a general and compulsory registry of title take place, I think it will be hardly prudent to assume that a less number than 100,000 titles would annually require to be registered. The task of registering titles, moreover, would be very different from the mechanical business of merely registering assurances.

The question whether it would be necessary to couple the registry with a public map is important, both on its own account and in consequence of the conflict of opinion which it has excited. Viewed in connexion with a registry of title merely, Mr. Duval's plan of dispensing with a map would not appear to be applicable, and I am not aware of any other which has yet been suggested than that of resorting to an index of names. As I fear the old error is still prevalent in certain quarters, that such an index is possible as the basis of a scheme of registration, I propose to examine the point somewhat in detail.

A system of general registration, founded upon an index of names, is of course intended ultimately to embrace all the lands of the kingdom, and therefore, if it succeed in attaining the object proposed, it must include the names of all the landowners and registered incumbrancers. The number of properties in England and Wales assessed to the Land Tax in 1798 was 1,465,950, and I do not know of any return that has since been published, which will give a more correct idea of the number of landowners whose names would have to be included. The elements of which this mass of names is to be composed, and which are to be arranged in alphabetical order, will require particular attention.

Within a very limited circle, I can point to an instance where a person at the age of little more than thirty had already borne, legally and regularly, four different names, and where another person chose arbitrarily, some few years ago, to assume a totally different name, by which he has ever since been known. There is a modern case, if I am not mistaken, decided by the Court of Queen's Bench, in which it was held that any man might adopt a different name without the royal licence, and that the name which he adopted, if he were known by it, was his legal name. The important bearing of such a decision upon an index of names must be obvious. But besides, it is only within little more than a century past, that a settled orthography of English proper names has begun to exist. In former times there will be found instances of the name of an author spelt in two different ways in the same printed title-page of his own works. The name A'Becket is at present inserted in alphabetical lists under the initial letter *A.*; but in our early literature, the great Archbishop of Canterbury is known simply as Thomas Becket. Another Archbishop of Canterbury, only inferior to the former in celebrity, Cardinal Pole, has his name generally written Pool or Poole. There is not a more thoroughly home-born English name, or one of greater distinction than that of Shakespeare; and yet three of his most eminent commentators (Malone, Mr. C. Knight, and Mr. Collier) write the name in as many different ways. I allude to these discrepancies in particular, because the names to which they refer are familiar as household words; but the list might be indefinitely extended. In comparatively recent times, individuals and families have changed, almost imperceptibly, the manner of spelling their names in certain trifling particulars, which do not affect the sound, but which would introduce confusion into an index. The substitution of *i* for *y*, or the contrary, is a familiar

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example. Even at the present day, the carelessness with which imperfectly educated persons in the rural districts spell their own names, has on several occasions come under my observation. In the case of legal documents executed by marksmen in particular, variations between the spelling of the name in the body of an instrument and the name appended to the signature, are of ordinary occurrence. Within only the last few days, I have had before me one case of a baronet omitting all allusion in his signature to one of his pre-names, which is inserted in the body of a legal instrument, and another in which a difficulty arose from Mr. James George having been hitherto described as Mr. George James. The two classes of error which these circumstances indicate would, I need hardly add, be very injurious to an index of names.

Another class of errors is adverted to by Lord St. Leonards in his pamphlet "Shall we register our Deeds, &c.," where he remarks upon the presumed consequences of a purchaser being deprived of his estate from a clerk carelessly writing Compton for Crompton, an error which his lordship states was actually committed under the existing Registration Acts.

Such, then, are some of the instances in which an alphabetical index of names is liable to fail by reason of errors; but there remain behind classes of cases which would render such an index in practice unmanageable. In an index of the names of landowners in England, the English peerage will present a very important feature, to say nothing of the eldest sons of peers bearing titles by courtesy, and of Scotch and Irish peers possessing lands in England. Is the name of their title or their family name to stand in the index? If the former, then in the common order of things Mr. A. this year may be Lord B. next year, and the earl, marquis, or duke of C. in the year following. If the latter, then who is to be responsible for knowing at every moment the family names and actual condition of all the nobility who bear titles throughout the three kingdoms? It is not very likely that a "John Lackland" will often be found in the peerage, and therefore the question proposed may be expected to apply more or less to a thousand names, and a very considerable proportion of the lands of England.

Then how are the lands held in mortmain, or otherwise, for religious, charitable, and public purposes to be represented by means of an alphabetical index of names? The clergy with their glebes; churchwardens and overseers in probably half of the parishes in England, as the trustees of what are commonly termed town lands, or church lands, and who are changed every year; surveyors of the highways; guardians of the poor; feoffees of the little patches of charity land dispersed through the country; trustees of the dissenting places of worship; ecclesiastical and municipal corporations;—all of these may be easily described in their corporate or collective character, and their individual names may be safely omitted in a system of registration founded upon maps; but where would be the definite and invariable places for them in an alphabetical index of names?

These observations may serve in some measure to dissipate the opinion which is popularly entertained that to make an alphabetical list of English landowners, with symbols referring to the titles or assurances of their estates, would be a simple affair, something like making a list of names and residences for a London Directory. But it will further appear, upon investigation, that even to make a London Directory with accuracy is not altogether a matter so very simple. There have been for some few years past two directories for London published annually in opposition to each other, and the rivalry between them has revealed some circumstances worth consideration in trying the issue now under discussion. The editor of one of these works points out specifically twenty-three alleged errors in little more than two pages taken without particular selection from his rival's publication for the present year, while that rival on the other hand boldly proclaims, in distinctive type, that he has made discoveries which indicate a proportion of error, giving "113,000 blunders" for a particular part only of the opposition Directory for 1853. In compiling such elaborate works perfect accuracy is unattainable, and the term is merely one of degree. The statements made by these rival editors, therefore, are, in my opinion, far less injurious to the editors themselves than they are to the advocates of a system of registration which must aim at perfection, and who propose for that end to place it upon the unstable platform of an index of names.

A system of registration, on the contrary, which is founded upon maps, will have for a basis the ground itself; and so great at the same time will be the expansive force of such a system when properly developed, that it may be made to include with ease classes of difficulties which no other system of registration can reach. I have often thought, without being able to satisfy myself, how Mr. Duval's plan of symbols would meet the following case. The ground which is now encompassed within a boundary line of about two miles, formed by Park Lane, Oxford Street, Regent Street and Piccadilly, was, in the year 1700 wholly unbuilt upon, with the exception only of a small space at the south-eastern corner, and a frontage containing a dozen or two of Houses in Piccadilly. The ground thus left vacant appears, by a map which is before me, to have consisted of about twenty fields, which, in the course of the ensuing century, became entirely covered with buildings. It is true that we advance more rapidly in these days, for almost equal areas, in the regions of Belgravia and Tyburnia, have been covered by houses in a quarter of the time, but I prefer the more ancient district which I have selected for illustration, because it is compact, clearly defined, and well-known. Let us assume that at the outset

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these twenty fields were all held under one title. Hyde Park, which adjoins, is, I believe, so held. Under Mr. Duval's plan this title would fall within the registration district comprehending the county of Middlesex,* which would contain perhaps 50,000 other titles. Let us take then, as its symbol, the No. 23,245. But by the end of the century, when the land had become wholly built over, there would probably be a thousand titles, where at first there was only this one. We may choose, then, for our present purpose that particular title of the thousand which bears the subdivisional symbol No. 703.

This latter title, again, might apply to half a dozen houses, which were afterwards sold separately. Consequently for one of these houses a third symbol would be required, which we may take to be No. 5. The figures $\frac{23{,}245}{\frac{703}{5}}$ would then represent the full symbol of the title, in the Middlesex register, to that house. If we were to take a hundred other titles, referring to houses in the neighbourhood of the former, we may thus readily suppose them to be represented by such symbols as the following :—

$$\frac{23{,}245}{742} \quad \frac{23{,}245}{\frac{703}{1}} \quad \frac{23{,}245}{\frac{703}{2}} \quad \frac{23{,}245}{742} \quad \frac{23{,}245}{689} \quad \frac{23{,}245}{\frac{736}{2}} \quad \frac{23{,}245}{\frac{736}{1}} \quad \frac{23{,}245}{748}$$

which are eight only of the symbols out of the hundred that would be required. A new street is then formed, as we know that Regent Street has been, and cuts through every one of the properties, the titles to which are represented by these hundred symbols, taking the whole property in some instances, and in others only a part. On each side of the newly-formed street, new houses will have to be built without regard to past boundaries, which, in the absence of a map, will exist only in imagination after the numerous properties have changed owners, and become intermixed and consolidated. Let us lastly suppose that, under these circumstances, a speculative builder has acquired the strip of land which now contains the houses and buildings forming the western side of Regent Street from Oxford Street to Vigo Street. My difficulty is this: with regard to this strip of land, what is the symbol which shall connect it with all the previous symbols referring to the titles which belong to it, disentangle it where it is involved with other properties held under titles referring to symbols common to both, and carry it back to the symbol No. 23,245 in the register from which we first started?

These complicated symbols, it is to be observed, are altogether conventional and arbitrary, and of no use in themselves, but are designed for the express purpose of removing the difficulties of registration; whereas a map, when it is once made, is really useful for a variety of purposes.

But even though the system of symbols were unobjectionable, neither Mr. Duval's plan, nor any other plan unaccompanied by maps, could protect our speculative builder from the chance of his taking by mistake, for one of his titles to land impinging upon Regent Street, a title referring to land, not near Regent Street, but actually in Park Lane.

Now the process which Mr. Duval's plan could only accomplish with extraordinary difficulty, if at all, would be simple and easy if proper maps had been employed throughout; and it would be impossible that the mistake as to title could happen.

It is alleged, however, that maps might be dangerous where land is of extreme value; and an instance by way of illustration has been given of land which was sold at the rate of 380,000*l.* an acre. But there would be no difficulty, if the boundaries of land should become of such exceeding importance as to justify the expense, in making a map of land of the same size as the land itself. Only a few weeks ago I had before me a case of exchange under the Inclosure Acts, involving freehold land situated within fifty yards of the Royal Exchange in London. The land in question was, as usual, described and identified by the aid of a map. A similar case is now before me in the ordinary course of business, embracing four pieces of freehold land close to New Cannon Street, and containing together in square feet 247 ft. 10 in. The smallest piece is 27 sq. ft. 2 sq. in. only, or the size of a common dining table. According to the surveyor's valuation the land is estimated at the rate of more than 130,000*l.* an acre. The map of these four pieces of land, which is to be used for the purposes of the exchange, shows their connexion with the adjoining properties; and a surveyor will at once apprehend its character by being informed that it is constructed upon the scale of 1 to 96. To give an idea of this scale to persons unaccustomed to surveyor's measurements, I may venture to state that every square yard upon the ground is represented upon the map by a space equal to a square described upon half the diameter of a sixpence. There are in the City of London 98 parishes, containing in the whole 370 acres, or an average of 3·77 acres in each parish. The largest parish contains 27 acres, but only 9 others exceed in size 10 acres each; and the smallest of all contains 0·8 of an acre. Upon the scale of 1 to 96, no surveyor would doubt that every square yard of land in the City of London might be accurately represented on a map.

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* The number of properties in Middlesex, according to the Land Tax Assessment of 1798, was 115,700.

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Instead, however, of further discussing what is possible to be done by means of a system of registration founded upon maps, I may perhaps be permitted to state what has been actually done by means of the Tithe apportionments, in which two-thirds of the lands of England are already registered. These apportionments, which are accompanied by maps, have for their well-known object the distribution of the tithe rent-charge amongst the titheable lands of each landowner in every parish; and they were made by valuers appointed by the landowners themselves; such valuers being the principal surveyors and land-agents of their respective districts.

A special branch of the Tithe Commission, called the apportionment department, has superintended and controlled the legal and formal part of this work. It will be obvious to every one who considers the subject for a moment, that in giving preliminary instructions to valuers how to proceed in the more difficult cases, in furnishing them with information in reply to their inquiries, and in examining and revising 11,746 apportionments, it was necessary to proceed systematically, and to devise rules and processes for the purpose of securing uniformity of structure, and preventing doubts which might give rise to future litigation.

This was the more essential, because the subtleties and intricacies of the old law of tithes were certain to come extensively into action in dealing with all the titheable lands of the kingdom; the provisions of the Tithe Act were as yet novel and untried; and the valuers themselves, intelligent and able as they undoubtedly proved to be, and intimately acquainted with the main principles of the tithe commutation, knew little—as a class—of tithe law, and were unaccustomed to the restraint of legal forms. As the fee-simple value of all the rent-charge which had to be apportioned represents a capital sum of little less than a hundred millions sterling, it was also of importance that the particular items making up the total rent-charge should be well looked after; or the multitude of them, amongst which were many very small subdivisions, might lead to omissions and errors which, after the confirmation of the apportionment, would be irremediable. In general, there were for every apportionment five distinct documents:—the original draft, the office copy, and three engrossed copies on parchment. The longest apportionment ever received occupied 399 skins of parchment; but, taking the whole of the apportionments one with another, cases in which a single one of them exceeded 200 skins, were rare. Those containing between 100 and 200 skins each were not uncommon, and the average of the whole was 23 skins for each draft, or 115 for each apportionment, including the draft and four copies. Where, however, a single landowner owned the whole of the titheable lands of a parish, except the glebe, the office copy was dispensed with; and if, out of the 11,746 apportionments confirmed, we allow the odd 1,746 for such cases, the quantity of matter which passed through the apportionment department, in one shape or other, may be estimated as equivalent to what would be contained in 1,310,632 skins of parchment. I have expressed this total in the quintuple, instead of in the single form, for the following reason. It was enacted that each of the three engrossments should be deemed satisfactory evidence of the matters stated in it; and thus it was necessary that the clerical as well as the substantial accuracy of each should, as far as possible, be provided for; and clerical errors, even in the office copy, would have discredited the public service, and held out a bad example to the valuers. Hence it became necessary to lay down new rules for collating the documents one with another, as it was easy to foresee that the common methods of collation would be insufficient to guarantee the accuracy of more than a hundred millions of figures. It will be seen from the foregoing statement, that in the examination of the apportionments there were four distinct points which required attention:—

1. Their legal accuracy;
2. Uniformity and clearness of expression;
3. Substantial accuracy in the figures of the draft;
4. Clerical accuracy in the copies;

the whole four of them being subservient to the capital object to be attained, that of fixing the right amount of rent-charge upon the right land.

The apportionments were founded upon agreements made between the landowners and titheowners, establishing the gross amount of rent-charge for each parish, or upon awards having the same object, made by the assistant Tithe Commissioners. These agreements and awards were intended also to show, generally, the various liabilities of the lands differently circumstanced as to tithes, as well as partial and absolute exemptions. These liabilities and exemptions, it will be remembered, depended in a great measure upon the evidence of old terriers preserved in the bishops' registries. The gross rent-charge for the parish was, on the other hand, established with reference to the average actual receipts of the titheowner during the seven years ending at Christmas in the year 1835; and where the parties interested were agreed as to the rent-charge, the most compendious, if not always the most satisfactory mode of showing the special liabilities in regard to tithes attaching to the parish, was to embody the terriers, or such parts of them as were deemed relevant, in the agreement. This was frequently done, and threw upon the valuers and the apportionment department no little trouble in intrepreting them. The same course, though more sparingly and judiciously, was sometimes followed in the awards. Every article of titheable produce might be owned by a distinct titheowner, or by a distinct class of titheowners in any number of undivided shares. Again, the

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rights of each titheowner might be confined to particular portions of a parish, which might thus consist of a hundred titheable districts, included in one apportionment; and, in one or two instances, the tithes which accrued at particular seasons of the year, were payable to different classes of titheowners. The complexity arising from combinations of these incidents was sometimes sufficiently embarrassing, for the subdivisions of interest amongst titheowners were excessively minute. The bee, for instance, produces three distinct titheable articles, honey, wax, and swarms; and in the case of a particular apportionment, containing numerous tithe districts, the wax and swarms in part of the parish went to one class of titheowners, and the honey to another; and, amongst one of these classes there was, if I remember rightly, a subdivision of the tithe of honey, together with other tithes, into fifty-six undivided shares. Then the lands discharged from the payment of tithes when in the manurance of the owners required a special treatment; and there were a few troublesome cases of parishes, where the full titheability or partial exemption of lands depended upon the double contingency of cultivation and occupation by a parishioner or non-parishioner. Such were a few of the complexities arising out of the law of tithes; but the irregularities which prevail in the mode of holding land in particular places, also interfered with the uniformity of apportionments. As instances of these irregularities, I may allude to

1. Land, subject to rights of common in gross, where some of the owners of the rights had no enclosed land in the parish.

2. Lot meadows, in which no one could define his own portion of land, but the owners drew lots for their shares every year.

3. Meadow land, in which one person owned the foreshare, and another the aftermath, each in severalty; or, in which the foreshare was held in severalty, and the aftermath was commonable.

Next to providing for the accuracy of apportionments it was of importance that they should be constructed in the simplest form which they were capable of assuming. The Tithe Act suggested the tabular form, which was adopted; and the various modifications of that form, to suit all the specialties which occurred, became the task of the apportionment department. If any one has followed me thus far, he will, I trust, come to the conclusion, that a system of registration which was capable of embracing the enormous mass of details that have been referred to, within the three following simple rules, which have been inflexibly adhered to from the first apportionment to the last, possessed considerable merit: these rules were,—

1. That the apportionment should show upon the face of it, that every essential term of the commutation which was capable of distinct expression, had been duly regarded. This was to provide for the legal accuracy of the apportionment.

2. That every quantity of land dealt with, should be entered once, and once only, in a single line, in the body of the apportionment; and that, however numerous or complicated might be the liabilities to which such quantity was subject, they should all be expressed in visible connexion with that single line. This was to secure the simplicity and clearness of the apportionment.

3. That the figures by means of which the quantities and rent-charge were expressed, and the connexion of the body of the apportionment with the summary, should undergo a separate and independant examination, in the office copy, and in each of the three engrossments, as well as in the draft. This was to ensure clerical accuracy throughout the whole of the proceedings.

Now, I have no hesitation in declaring my belief, that if it had not been possible to realize through the eye, by means of figures, the contents of the various quantities of land which were to be separately dealt with, together with the rent-charges applicable to them, in a compact and condensed form, these rules would have been impracticable; that no other rules could have produced the same degree of accuracy; and that such a form was unattainable except upon the confident assumption that the quantities themselves were in reality what they were described to be; and the description itself would have been worthless if not accompanied by a map.

As an illustration of the first rule, we may take the common case of farm moduses. Let us assume that a landowner owns an estate of 500 acres, of which a particular farm containing 200 acres is discharged from the render of tithes in kind, by payment of a modus of one pound;—that 80 acres are discharged from tithes in kind by a modus of threepence an acre—that 120 acres are titheable in kind, for which a composition of 18*l.* was paid annually; and that the remaining 100 acres are tithe-free. It has been a common practice for the landowners of a parish to give instructions to the valuer to apportion the rent-charge according to past payments, or in other words, that each landowner should pay under the new arrangement what he previously paid under the old. This sum, it will be observed, would, in the case which we have assumed, be 20*l.*; viz., 1*l.* for the modus, 1*l.* for the 80 acres at 3*d.* an acre, and 18*l.* for the composition. But here another element is to be considered; for the general practice throughout the kingdom, where tithes were under composition, was for the landowner to pay the rates for the titheowner, in addition to the composition; and as the rent-charge in lieu of tithe is made rateable, it became necessary, in all such cases, to make an addition to the composition as a consideration for the rates. An apportionment, therefore, made according to past payments, meant past payments and

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rates combined. We will suppose that in our assumed case the rates were 4*s.* in the pound. Now in the early stage of tithe commutation, when the draft apportionment for the parish in which the estate was situated arrived in the tithe office, there was a strong probability that the gross rent-charge would be set down opposite to the total of 500 acres forming that estate, without any sufficient specification of the peculiar liabilities to which each portion of it was subject, The draft would thereupon be sent back to the valuer, with directions to set out separately, under distinct totals, the farm subject to the modus of 1*l.*, the 80 acres subject to the modus of 3*d.* an acre, the 120 acres subject to tithes in kind, and the 100 acres which are tithe-free. Upon the return of the draft to the office, under the circumstances above stated, it was almost a certainty that the rent-charge upon the farm would be 1*l.* 4*s.* instead of 1*l.*, ; the valuer having added 4*s.* to the modus for rates. The like addition would be found made in respect of the modus of 3*d.* an acre. A lawyer will at once detect the errors thus committed; for the moduses represented the full value of the tithes in kind; and it was expressly provided by the Tithe Act, that in apportioning the rent-charge, lands should have the full benefit of every modus. In fact the valuers hardly ever adverted to the distinction between a modus and a common yearly composition, until it was pointed out to them ; and many hundreds of errors have been corrected under this head alone. The necessity for setting out separately the modus and tithe-free lands, will be further apparent, from the possibility that all lands which render tithes in kind might become subject to an extraordinary charge, if cultivated as hop-grounds or market-gardens ; from which charge, these lands covered by the moduses, and tithe-free, would be exempt. The advantage of the rule was also shown in its limiting, within the narrowest compass, the ground upon which objections to the apportionment could be taken at the parish appeal meeting, and confining such objections almost exclusively to questions of the relative value of titheable produce yielded by particular lands.

With regard to the second rule, the chief difficulty occurred in some of the large northern parishes, where tithes were owned by numerous parties in three distinct classes. In some of these cases, the vicar owned all the small tithes, except lamb and wool; a class of impropriators owned the lamb and wool tithes of twenty or thirty separate districts ; and another class of impropriators owned the great tithes of as many other districts ; the districts to which each class of impropriate tithes applied being wholly different. In such cases, each quantity of land inserted in the apportionment might be liable to three distinct rent-charges ; and it required a careful analysis of the lands of the parish, in order to keep within the rule, so as always to show at a glance, and without mistake, the three rent-charges to which each quantity of land was subject. Another type of the same difficulty was, where the vicar had all the small tithes, a class of impropriators the hay tithes, and another class the rest of the great tithes, in separate and unconnected districts of the same parish.

The third rule speaks for itself, and the effect of it has been very satisfactory. A clerical error of a halfpenny omitted, was once discovered in the body of an engrossed copy, but as the error was not repeated in the summary, no harm could have happened from it. With this single exception, I am not aware that in the distribution of rent-charges, amounting to between three and four millions sterling over all the titheable lands of England and Wales, a single mistake has ever been detected by the public.

Having thus stated my reasons for preferring a system of registration of title founded upon maps, either voluntary in character or limited as to district in the first instance, I proceed to the more serious task of considering how such a system is to be carried into effect. I have not the presumption to suppose that I can, at present, do more than furnish one or two hints towards the accomplishment of a work of so much difficulty, and I should be gratified to find that even these are not altogether valueless.

The scheme of registration originated by Mr. Wilson appears to me to be preferable to any other which has come under my notice ; but the objection against it, in the expense and delay of providing the maps, is a considerable disadvantage. To map all England and Wales, would require about 10,000 maps of districts not included in the available tithe maps, and might be expected to occupy ten years. If the scheme were tried experimentally upon a single county first, with the idea of bringing in the other counties gradually, it is plain that the process would be much longer. But there is another objection which presents itself to my mind in connexion with the mapping of the kingdom at once, though it has hitherto, in all previous schemes of registration, been either ignored, or passed over in an unobtrusive sentence or two, as though the matter were an unimportant detail. What is to become of all the copyhold lands? Lord Coke estimated these, if I remember rightly, as forming more than half the land of the country in his time. If we go back a century earlier to Fitzherbert, his treatise on "Surveying" will present a striking picture of the wide extent of the copyhold system then existing. Unfortunately, there is hardly any reliable information to be obtained as to the extent of copyhold lands at the present day. About fourteen or fifteen years ago, I devoted some attention to this point, and the result of my investigation led me to the opinion that the copyholds could not be much less than one sixth of the kingdom. They have, however, been decreasing more rapidly since that time. Are these copyhold lands to be mapped? If so, what is the use of incurring the expense of mapping a parish which may not contain an acre of freehold land, and to which the register will not apply? If they are not to be mapped, then the

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system of registration is incomplete, and there will be forced upon it the perplexing questions to answer throughout the kingdom, and particularly in Norfolk and Suffolk, of what is copyhold and what is freehold land. The objection suggested by copyholds, I have stated in its simple form, but it is becoming daily more complicated, in consequence of the shifting of tenure which is now going forward, upon the exchange of freehold for copyhold land under the general Inclosure Acts (*See* 9 & 10 Vict. c. 70. s. 9.); and by means of which lands may be removed to a considerable distance from the manor to which they appertain. There is one other point which my past experience points out in connexion with the tithe maps, and the maps required for a general register. There must be more than 2,000 parishes, reckoning the northern townships as parishes, in each of which a single landowner owns either all the land, or all the land except the glebe. The boundaries of these parishes are well known, but the parishes themselves have in general been mapped in a very rough manner, where maps of them have been required for the purposes of tithe commutation. I have been in the habit of considering that one particular nobleman owns no less than 150 of these parishes, most of which have probably been in the same family for centuries, and may possibly remain so for generations to come. With reference to parishes like these, all that appears to be essential for practical purposes, in making a map of England for a register, would be to procure a correct outline; and the internal subdivisions might be added when the land came to be divided. Such parishes, moreover, might safely be left amongst the last to be brought upon the register.

If I rightly understand the feeling which is abroad, what the landowners of England want, is present relief against the oppression of a restrospective investigation of title; and what the capitalist, when he buys an estate wants, is security that he shall not have to pay an indefinite sum in addition to the purchase money, and get a bad title after all.

Having regard to these circumstanees, I have been led to the consideration whether the benefits proposed by Mr. Wilson's plan might not be attained, and the objections to it obviated by other means; and the suggestions which follow are the result of what has occurred to me.

My proposition then is, to start the system of voluntary registration of title at once; to take advantage of the tithe maps as far as they are available; and in other cases to work out the system by means of private maps, authenticated through the agency of an official supervision; but to make a proper map in every case indispensable. What I mean by a proper map is one scientifically constructed upon a sufficient scale, showing the connexion of the land to be placed upon the register with the adjoining properties, and showing also its position with reference to some permanent object, such for instance as a church, a bridge, a cross-road, or a hamlet. All respectable surveyors are accustomed to the construction of such maps, and not a week passes over without several of them coming under my observation.

The next consideration is how to bring the land upon the register, in such a manner that a parliamentary title to it may be secured to a purchaser. This is the great obstacle in the way of registration of title; and the attempt which I shall make to remove it, will certainly not be engaged in without a full appreciation of the hazard of the undertaking.

I set out then with the proposition, that it will be necessary to bring into action the principle which has been recently adopted with so much advantage in the ordinary administration of justice—that if you have a sufficient check upon a man, he may be trusted to speak the truth as a witness in his own cause. What, it will be asked immediately, would you allow a man to assume that he is tenant in tail, and to convey away the family property, when he may be only tenant for life? To this I reply, that where a man of common intelligence cannot, by the aid of professional assistance, ascertain whether his interest in a property is an estate tail or for life only, such a doubt may cast a reproach upon the law, but need not present any insurmountable difficulty, because any one who was not prepared to commit a gross fraud would, under the circumstances, apply to a Court of Justice to settle the doubt for him. Certainly a mere tenant for life might attempt to act dishonestly in such a case, as under the existing state of the law he might attempt to suppress a settlement, though the probability of his success, I believe, will be somewhat different. The extent to which such frauds are likely to happen, however, is a matter of opinion. The barbarous maxims of distrust and suspicion upon which the practice of a retrospective investigation of title is founded, assume, as a matter of course, that every landowner intending to sell his land is a questionable character; and there are people who hold the maxim that every tenant for life is the natural enemy of his successor in estate. But it is precisely these maxims which have brought the law of real property into the condition from which every one is now desirous of extricating it. My opinion upon such a matter may not be entitled to much weight, but it is at least based upon a wide administrative experience. There have been received in the Tithe Office about 8,000 reports from assistant Tithe Commissioners, of the proceedings which took place at appeal meetings, held in the country, for the purpose of hearing objections against apportionments. I have, during the last sixteen years, carefully read through these reports, and considered the objections contained in them; and my belief is, that not a single instance exists on record in the Tithe Office of an objection against an apportionment ever having been made by a reversioner. I think, then, that attempts at

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the kind of fraud which has been suggested would be rare, and with the checks to which I shall presently advert, in the highest degree unlikely to succeed.

The course which I would suggest is, that printed forms should be issued by the registrar, to be filled up by landowners desirous of applying to place their lands upon the register. The form when filled up may be called an "application," and it should contain the name, occupation, and place of residence of the landowner, the legal character of his estate in the land, a brief description of the land itself together with its contents expressed in figures, the name of the occupier, and also of the parish and county in which the land is situated; and reference numbers for the several parcels should be added, to correspond with similar reference numbers on a map by which the application must be accompanied. A notice of all the charges affecting the land, except tithe rent-charge, must further be inserted in the application, or where there are none, that fact should be specifically stated. The mines which may be owned apart from the surface of the soil must likewise be attended to; but, in practice, the complexity which this would occasion might be greatly diminished by means of arrangements which should subject the districts within which valuable mines are supposed to exist to a special treatment. The progress made of late years in the science of geology, renders it nearly certain that such arrangements might be easily and satisfactorily effected. Some few easements, besides, might likewise require particular notice in the application. A statutable declaration signed by the landowner himself, alleging that he believes the several statements inserted in the application to be true, and that the map is accurate, should likewise be added. The various solicitors throughout the kingdom would in practice afford assistance to the landowners in filling up these applications, and it would, I think, be desirable to appoint particular solicitors, as perpetual commissioners are appointed under the Fines and Recoveries Act, to authenticate the signatures of landowners and take their declarations. The application, so filled up, should then be sent to the office of the registrar in London, who should forthwith cause the contents to be published three times in some newspaper generally circulating in the district where the land is situated, together with a notice pointing out where the map of the land may be inspected, and calling upon objecting parties to state their objections. The registrar should likewise send a copy of the application, together with a copy of the map upon tracing cloth,* to the registrar of births, marriages, and deaths, of the district within which the land lies; and in his office the same should be open for public inspection. As the copies of applications are to be made officially, all of them would be of the same size, and being stitched into a portfolio, it would be desirable if some arrangement could be made by which the same should be laid by the registrar of births, &c. before the Board of Guardians of the Union at their ordinary meetings. Another obviously simple mode of exhibiting the advertisement would be by cutting it out of the newspaper, and pasting it on a board for all persons to look at who came into the office of the registrar of births upon other business. In order to secure still greater publicity, I would also provide that the registrar's office in London should issue monthly a printed statement of all the applications received during the three preceding months, by which means a notice of each application would appear in it three times. This printed statement might, I think, without any charge to the office, be sent post free to every landowner, solicitor, or other person requiring it, upon his payment of an annual subscription of 2*s.* or 3*s.* The printed statement would contain a description arranged under the heads of counties and parishes of the land included in the various applications, sufficient to point out the property to any person who was interested in it. In the case of property in towns, the name of the street and number of the house would be given. If no objection was made within four months after the application had been received, the land might then be placed upon the register; and if, again, within the next two years there was no objection brought to the notice of the registrar, the land at the end of that time should be considered held by a Parliamentary title, and might be so conveyed to a purchaser for valuable consideration.

It will be seen that the foregoing scheme would not be applicable generally to the class of small properties under 100*l.* in value, because it would entail in the simplest case an expense of probably not less than 4*l.* When the property was extensive, and its description of corresponding length, the advertisements would necessarily increase the expense. But it so happens that the class of small properties is the one for which a register is not urgently demanded.

The foregoing outline constitutes the distinctive features of the plan which I have to propose for a voluntary registration of title. It is applicable to the main grievance which is actually felt; and may when necessary be extended, so as to embrace a general scheme of compulsory registration.

Entire parishes might next be brought upon the register, on the application of a certain proportion in number and value of the landowners, but subject to the condition that no dissenting owner of merely copyhold lands should be called upon to contribute towards the expense, and subject also to the control of the registrar, in defining the limits of parishes for registration purposes. The necessity for this control will be apparent when it is remembered how much the parcels of land belonging to different parishes are sometimes

* This tracing cloth is a modern invention.

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intermixed with each other—almost as much indeed, though not with the same degree of regularity, as the white and black squares upon a chessboard. The specimen map of the parish of Graveney* will afford a slight illustration of this remark, where it will be seen that a portion of Boughton parish adjoining the sea is completely cut off from the rest of that parish, and three portions of Graveney parish are detached from the main body and situated in various places within the limits of the parish of Faversham. Indeed I think that, unless reasons stronger than I at present contemplate occur for adopting a contrary course, every registration parish or district ought to be exclusively contained within one unbroken line of boundary. When the map of the intended registration parish has been provided, an assistant registrar, after due notice given, might proceed to the parish for the purpose of registering the landowners, according to the plan proposed by Mr. Wilson. By this means the little properties as well as the great would be brought upon the register, in all places to which the parochial registration extended. This process of registration by parishes might be going on concurrently with the purely voluntary registration of individual properties, nor would the two parts of the plan clash; for if a parish came to be registered in which a partial registration had previously taken place, nothing would be easier than to indicate, by means of a particular colour upon the parochial map, the lands to which the partial registration applied.

The third and concluding part of the plan which I propose may be assumed to commence at a distance of ten years from the present time, when means should be taken, methodically and compulsorily, to bring all the outstanding parishes upon the register; but still leaving the two former parts of the plan, as far as they were applicable, to go on concurrently, until every acre in England and Wales was brought upon the register. During the intervening ten years, however, some legislation, more worthy of the nation than the inefficient copyhold acts at present in existence, might extinguish the copyhold system, giving a full compensation to all the interests involved in it; and I have no doubt that if the work were zealously taken in hand it might be completed within five years.

Such, then, is a rapid sketch of what appears to me to be practicable towards providing a general register of title. I have touched, incidentally at least, upon several of the capital points which the subject naturally suggests, but the conveyancing details involved in the Commissioners' questions, I have neither time nor ability to discuss with advantage. Indeed I cannot but feel that the want of precision in some of my statements, where I have not have not had leisure to refer to authorities, will already have been apparent; and I have only, in conclusion, to apologize to the Commissioners for the deficiency.

H. Pyne.

Mr. C. Ellis.

Mr. Charles Ellis, Barrister (*Conveyancer and Equity Draftsman*).—31*st October* 1854.

1. There are, without doubt, exceptional cases, in which the sale and transfer of land are rendered more expensive than they ought to be, by the necessity of retrospective investigation of title, especially in cases of sales of small amount or in which the same title has recently been investigated, and possibly the apprehension of exceptional expense may, in many cases, where the apprehension is not warranted, tend to impede sales; but, as a general principle, I consider that the security obtained by the investigation of title at least ultimately compensates the expense thereby incurred,—at present I apprehend few cases occur of purchasers unknowingly taking a bad or doubtful title. As a general rule, titles, as disclosed upon an abstract, are or turn out to be practically good; but it would be too much to assume that the same proportion of good titles would occur if the necessity of investigation were abolished, and that therefore investigation is unnecessary. It is the certainty of investigation, I apprehend, which operates as a check upon fraudulent assertion of title, or the suppression of deeds affecting it.

2. A solicitor, in extensive practice, will be better qualified to give a satisfactory answer to this question; but I venture to observe that I do not see how the disposition of land is in fact, or can be impeded, by reason of a want of registry of title to the land, or the assurances deducing the title. Ireland has the advantage (if it be one) of a registry of assurances; nevertheless it has been found necessary to resort to the strong measure of the "Encumbered Estates Act," for the purpose of effecting sales of estates affected by debts and settlements. The distinction between title and assurances deducing title is not very obvious. It appears to me that title properly so called can scarcely be said to exist in the absence of the assurances deducing it. Such a title as suggested would rather be an assertion of title than the title itself, and if to be deemed title, might in a great measure depend upon the skill, accuracy, and integrity of the solicitors or officers employed.

3. My remarks upon the second question, in some degree, answer this question: but I may add, that if in addition to the doubt whether a registry would assist the disposition of lands, a doubt in the public mind should arise as to the validity of the title as placed upon the register, the sale and transfer of land would be rather impeded than facilitated by a public register or record of title.

* Inserted opposite to p. 248 of the Appendix to "The Report of the Registration and Conveyancing Commission."

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4. From the view I entertain upon the second and third questions, I might perhaps forbear to answer this question; but I may be allowed to state that I can scarcely conceive that a large purchaser would, under any circumstances, waive the investigation of title; if he should do so, without doubt, some expense would be primarily saved to seller and buyer, but some strong legislative measure would be necessary to make the buyer more safe and secure even as to the commencement of his tenure. Assuming such a measure to be carried, it might work most injuriously as regards persons whose interests may have been overlooked or disregarded upon the sale; and although the buyer might, in the first instance, be more safe and secure, yet the facility with which he bought might at a future time become a weapon to be used against him, or those claiming under him.

5 and 6. A solicitor, in large practice, would be better qualified to answer these questions satisfactorily. A good deal might depend upon the question whether by the conditions of sale or the agreement any restrictions are placed upon the length of time as to which the right of investigation is to prevail.

7. As before suggested, it does not appear to me practicable to form a register of title in a strict sense distinguished from a register of the various assurances from which the title has been derived. Title appears to be the result of the various deeds and assurances, and cannot safely be severed from them. There will be a difference of opinion as to whether deeds and assurances should appear at length or abstracted. In either case, and the latter especially, it would be unsafe to purchase without the opportunity of comparing the abstracts with the originals; and in either case the expense of comparison would be increased, and some inconvenience, and a danger of inaccuracy incurred, by the necessity of making the comparison in a public office instead of the quiet of a private one.

8. A registry of title might, by an act of the legislature, be instrumental in simplifying title; but such an act, as before and herein-after suggested, might work great injustice to absent persons. As to the form of conveyance, it is not easy to see how a register of title would tend to simplify the forms of conveyance. These forms might be simplified without a register,—in fact they have been simplified by the legislature; but as they have not found favour with the public, they are, I apprehend, very little used. Besides common covenants, special covenants are frequently found necessary, which it would be difficult for the legislature to anticipate.

9. If a register of title were established, I do not see how any interest legal or equitable could be dispensed with upon the register without great danger to persons interested.

10. Title is of so variable a nature as to time and circumstances that it is not easy to state what is an actual and existing title; there are and may be cases of very old tenants for life, and whilst in one case a retrospective inquiry for nearly a century may be necessary in another one for a few years may be sufficient.

11. *Prima facie*, it does not appear to me that a register disclosing the deduction of the title would differ materially from a registry of assurances; a good deal might depend upon the effect which the legislature might give to the register, and whether the doctrine of notice is to prevail.

12. It appears to me that it might work great injustice to omit any form of ownership whether legal or equitable from the register, if title is to be founded upon the register alone.

13. Assuming that this question involves the answer whether the doctrine of notice ought to prevail, I am very much inclined to doubt whether great injustice might not be done if equitable interests or trusts were not to bind except when specially protected. Without doubt it would much simplify title to exclude what does not appear upon the register. On the other hand, great wrong might be done to creditors, portionists and legatees, whose legacies are charged upon the land; they might be infants or ignorant persons, or residing in distant places, or without the means, pecuniary or professional, of placing their claims upon the register.

14. I think it would be undesirable that equities and trusts, except when protected on the register, should become personal confidences only, not conferring any right as against the land; such a principle would be contrary to the intention of settlors and testators in general, would tend to shake the public confidence in landed property, and do injustice to beneficiaries. As before suggested, a purchase might be effected with greater facility, but by the same rule a sale which might totally defeat the purchaser's intentions might with equal facility be effected by some person or persons purporting to claim under him or perhaps against him.

15. Undoubtedly trusts and equities intended to affect the registered owner might be protected on the register so as to prevent the registered owner from transferring the land whilst such protection should exist; at the same time it is not very obvious to see of what public advantage such a register would be. Besides office fees, professional expense must be incurred in properly placing the various interests upon the register; much would depend upon the skill and accuracy of the professional assistance, and after all injustice might be done by the omission of interests from causes above suggested.

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16. I do not see how the existing system of settlements could be continued consistently with the principle of a "simple register of title," as I understand the phrase, if it implies simply the title of the owner or owners of the fee, or the more limited estates of which it is composed, to the exclusion of equitable interests.

17. I do not think that settlements, trusts, and equities would be adequately protected by allowing the parties interested under them or others to put a distringas, caveat, or stop, upon the register, or to take some proceeding of a similar nature for the reasons suggested in the answer to Query 13. Persons ignorant of business, living in remote districts, might discover after a lapse of time varying according to circumstances, that they had been deprived of their rights behind their backs; and some even if apprised of their rights in due time might be unable, from various causes, to assert them. Even if commissioners or other officers were constantly to move from place to place, I apprehend that even they would be insufficient to remedy the injustice, or to check the frauds which would be practised; for without doubt frauds not easy of detection would be attempted, such as to place upon the register unfounded claims; then the question arises how are valid claims to be distinguished from unfounded claims, and yet that distinction must be made if all interests placed upon the register are to bind; and that would involve a species of inquiry or litigation involving a large portion of the estates of this kingdom.

18. 19. 20. 21. 22. 23. 24. From the view I take of the 17th question, I forbear to attempt to answer these questions.

25. I do not consider that the instances of misappropriation, personally fraudulent, on the part of trustees are numerous; but I think that the instances of misappropriation by trustees of stock or money, involving loss to some or one of the beneficiaries, are very frequent—for example, that of ignorant or weak-minded trustees yielding to the pressure of needy parents or tenants for life as against the interests of their children or others interested in remainder. In my opinion the danger of misappropriation, coupled with the fact that stock when sold cannot, except under any special circumstances, be followed, is in a great degree the reason why land bears a higher relative value, as regards interest of money, than stock. Stock has many advantages which land does not possess—the dividends are paid to the day, and it has few of the drawbacks and expenses attending land; and yet we find that a purchaser of land is usually content with three per cent. interest for his money, whilst he usually looks for four or more upon personal investments. At present the public have had full confidence that land, with all its charges, legal or equitable, is a tangible and real subject, which cannot be disposed of so as to injure the interests of those entitled. In cases of stock invested upon trusts, the firmness as well as the integrity of the trustees is of vital importance, but in the case of land their office is rather ministerial, and under the present system of investigation they can with difficulty do any act injurious to their beneficiaries.

26. Having regard to the cases suggested and this question, it would, in my opinion, be objectionable, as part of a system of registration of title, to vest the registered ownership, both legal and equitable, in trustees, subject only to the liberty given to beneficiaries of protecting themselves by distringas, &c. In the first place, as a principle whether ill or well founded, I think that the opinion of landowners, whether on a large or small scale, would be opposed to a measure which should vest legal ownership in trustees, or in any manner affect the dominion which a legal owner now has over his estate. It would be resorting to a principle in reality which now only exists nominally, upon which all lands are deemed to be held of a superior lord, and in the absence of the reasons upon which that principle was founded. Secondly, it might lead to much abuse and fraudulent dealing in the absence of strong legislative guards, and it would shake public confidence in, and thereby lessen, the value of landed property.

27. It appears to me that the security of settlements and trusts would be unduly impaired by their ceasing to bind the title and follow the land (as at present), and depending upon their efficacy as against the land upon acts and forms external to the settlement, as suggested in the preceding queries. Such a principle would appear to place a party interested in a new and worse position, and one not contemplated by a settlor or testator; the party interested would by such means be put upon the proof of rights which, in the present state of the law must be considered *primâ facie* as not controverted.

28. Assuming a register to be established as suggested in the preceding questions, it appears to me that it would be necessary for the purpose of insuring accuracy in the registered title, and for the security of purchasers, to couple the register with a public amp. The subject of the map has been so much discussed upon inquiries of a similar nature that I forbear to remark upon it further than this. As to a map for ordinary purposes, an engineer will be better qualified to give a satisfactory answer; but assuming that the map is to constitute legal evidence, I think there would be great difficulties both as to agricultural districts and the neighbourhood of populous towns, but for different reasons. As to the first, within my own knowledge in many of the midland counties there are farms, say of two hundred acres, composed of fifty or more of strips of land lying unenclosed in the common field, and there is amongst the occupiers on such farms a constant disposition to trench upon the boundaries of the neighbouring lands—a disposition producing a fertile source of dispute. The tendency to enclosure may ultimately obviate this objection, but at present I consider that much difference and litigation would arise out of the attempt to form a map binding the rights of parties; as to the neighbourhood of

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populous towns the difficulty would be of another kind, arising out of the value of such properties. The boundaries are generally well ascertained, but, having regard to building speculations, the subdivisions and changes of ownership are so numerous that though an accurate map might be made at one period, yet in a very short time the boundaries and the ownerships might be completely changed, not once only but several times over. It would be a subject of great difficulty to keep the map accurate even for ordinary purposes, but still more so as affording legal evidence of title.

29. I do not see how, having regard to accuracy and security, an inquiry with power to determine by some public officer as to accuracy of description and indentity of the land could be dispensed with.

30. In my view it would be necessary to invest the chief registrar, or some other public officer with judicial authority for the purpose of ascertaining the accuracy of description and identity of the land, and for this purpose a large staff of officers, moving from place to place, would probably be necessary. The effect, I think, would be, to produce much public dissatisfaction and frequent litigation; the more objectionable because it would probably be conducted under the jurisdiction of an officer comparatively subordinate—whilst at the present time the public, in questions affecting real estate, has the benefit of being enabled to take the opinions of the highest legal authorities of the land.

31. After my remarks upon a register in general, I forbear to offer an opinion upon this question further than as follows. The great source of complaint as to expenses of making out titles and transfers applies more particularly to small purchases. If it should be thought fit to try the experiment of parliamentary title, it would be safer to try it in the first instance upon small purchases, say not exceeding 1,000*l.*, with perhaps an option to buyer and seller to deal upon the old system or the new. This would not be a new principle of legislation; there are varying scales of duties under the stamp laws; there is a different course of procedure for the recovery of small debts from that of debts of large amount, and the statute of frauds observes a distinction as to leases exceeding three years and also as to purchases of goods under 10*l.*

32. If registration is not to confer a warranted title, the use of it is not very obvious; if it is to confer such a title, I see no mode of ascertaining who are the persons interested, or the nature of their rights, but by means of a staff of officers as before suggested.

33. I think it would not be sufficient if the provisions of the registry related only to title subsequent to its commencement, leaving the antecedent title to be still the subject of investigation. Having regard to the various instruments affecting large family estates, it would be very difficult, accurately, to place upon a register what has been called "a simple register of title,"—it would not be the complete title but a portion of it or a mere assertion of title. I may remark in conclusion, that assuming the possible extension of the Irish Incumbered Estates Act to this country, some of the objections hereinbefore noticed of danger to the interests of absent parties might be obviated. That court, I believe, protects such interests by laying its hands upon purchase monies and retaining them until the parties interested can establish their respective titles. That measure, however, was a very strong one, carried under special circumstances, and for temporary purposes; and it may be much doubted whether public opinion would be in favour of such a measure to take effect in this country, and still less, so as to become one of its permanent institutions.

CHARLES ELLIS.

Lincoln's Inn,
October 31, 1854.

Mr. J. T. Humphry.

Mr. J. T. HUMPHRY, Barrister (*Conveyancer and Equity Draftsman*).—*2d November* 1854.

AN affirmative answer to the first question of the Commissioners would imply that some means were already known, or could be devised, by which the necessity for the retrospective investigation of title might properly be avoided. The means suggested for this purpose by the other questions, even if they could be so applied as to remedy that evil (which I much question), seem to me likely to be attended by fresh evils of equal, if not greater magnitude.

It is difficult to form an exact estimate of the benefit or mischief which might result from any system of registry, whether of assurances or of title, until it has been fully exhibited in detail. But after some consideration of the various systems of registry, so far as they have been developed, I doubt whether there is one which, however plausible it may appear at first sight or in one aspect, will, upon close examination, be found to be practicable and beneficial. Some serious objections, in regard to the practical working and effects of the late Mr. Duval's peculiar system of registering assurances, I ventured to call attention to in a pamphlet upon the late Bill for the Registration of Assurances. The difficulties and objections which exist in regard to the practical working and effects of a registry of title or ownership appear to be no less serious.

The following are some of the difficulties I refer to:—

1. The difficulty of sufficiently identifying the land upon the register, for the purposes of sale and transfer, and for the purpose of search.

2. The difficulty of first getting upon the register, without prejudicing existing partial and equitable interests, the entire legal fee in the name of some conventional owner as the basis of registered title, for the purpose of sale and transfer.

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3. The difficulty of sufficiently protecting partial and equitable interests from destruction or injury by fraudulent or improper dealing on the part of such registered owner.

With reference to these difficulties it may be observed—

There must be a *territorial* index; perhaps, too, an index of owners. I doubt whether a mere verbal description of the land would suffice, and whether a map index would not be absolutely necessary under a register of titles. The difficulties in establishing and maintaining an efficient index of any kind, and especially a map index, are in themselves of no ordinary kind; and though no part of the subject was more anxiously considered by both the Real Property and the Registration and Conveyancing Commissioners, still these difficulties are amongst those yet remaining to be solved. And until they are solved I doubt whether any one who was fully alive to them could strongly advocate a general registry.

Partial and equitable interests constitute a very large proportion of landed interests. To require them to be registered would be to sacrifice the simplicity of the register; to exclude them from the register would be to jeopardize them by placing them at the mercy of the registered owner, except so far as the persons entitled to such interests became *active* in using the allowed means of restricting his power of disposition.

The owners of these interests may now remain *passive* and yet be sufficiently protected. To deprive them of their present grounds of security, and substitute the necessity of taking *active* measures by distringas or otherwise to protect themselves from improper dealing on the part of the registered owner, would be placing such owners in a new and critical condition requiring much intelligence and caution, and tend greatly to diminish the value of these numerous and very important interests which are themselves constantly the subjects of sale and transfer.

Besides, these interests often belong to married women, persons under age, or unborn or abroad, or of unsound mind, or ignorant of their rights, or in poor circumstances, who are thus unable to come forward at the right time or in a proper manner, and to employ solicitors and adopt the various means, perhaps tedious, dubious, and costly, but still necessary to render their interests secure.

Nor would the risks to which these interests would become subject from fraudulent or improper dealing on the part of the registered owner be trifling. The precautions which a purchaser now has to take in dealing with a trustee constitute a great security to cestuique trusts. Even in the case of stock, a person who deals knowingly with a trustee is obliged to be on his guard, that the consequences of a breach of trust may not attach to him. Yet how much more numerous are breaches of trust in cases of stock than in cases of land at present, by reason of the greater facility with which trustees can sell stock without notice of a trust. But a registered owner of land, though a trustee, and known to be a trustee, would sell as *owner*, and not as trustee, except so far as partial and equitable owners might come forward to restrain his power. The check arising merely from his being *known to be a trustee* would not exist as in the case of stock, for a purchaser of land would be required merely to look to the register. Thus there would be increased temptation in the additional facility given to commit breaches of trust.

With all the securities and remedies existing under the present system, a trusteeship, where it is adopted, is more of necessity than of choice, and the Court of Chancery is already much occupied in correcting breaches of trust. To increase the number of trusteeships, with the present checks, and among others the check of *notice* removed, and to give trustees or registered owners absolute power of disposition, except so far as partial and equitable owners, however circumstanced they might be, should become active in restricting such power, appears to be a very questionable incident to a registry of titles.

The above objections are not of a limited character, but concern every house and acre of land in the kingdom, since what is now a beneficial ownership in fee may at any time be subdivided into partial and equitable interests. They apply also as well to the first getting the title upon the register as to the keeping it there.

Supposing, therefore, the preliminary difficulties in first establishing a registry of title or ownership, which are unquestionably very great, to have been got over, and supposing one object to have been thereby attained, viz., greater facility in disposing of real property, I think it would only be at the sacrifice of a still more important object, and at the risk of the secure possession and enjoyment of the beneficial rights of property.

I much doubt whether a general registry of any kind is adapted to the present complicated real-property system of this country. So far from conferring a benefit it would operate most injuriously to landed interests, unless the proposed plan and details could be easily and safely applied, not merely to the particular case or two which might be selected as a favourable illustration of its working, but to the infinite variety of cases which are constantly arising. It is no uncommon thing to advocate a particular system of registry as beneficial in one aspect, regarding too little how mischievous may be its operation in other respects. And those who see no reason why land should not be made as easily transferable as stock, seem to overlook the cases in which a title has to be deduced even to stock, and how incomplete is the analogy between land and stock, the former being substantial, requiring to be specifically identified, and often giving notice by its mere mode of occupation of rights different from any shown by its documents of title. No doubt certain preliminaries being settled in each case, it requires but a stroke of the pen to transfer land as well as stock. The difficulty is in settling the preliminaries so as to bring the transfer of land completely and safely up to that point. So far as any register

is concerned, the great difficulty is in the application of its practical working details to a very complicated state of things, in such a manner even as not to produce positive mischief and inconvenience; and until this practical difficulty has been shown to be clearly surmounted, it seems vain to tender a general approval of such a measure as a general register. *Mr. J. T. Humphry.*

I am disposed to think that more good might be effected by some judicious and well-considered amendments of the law of real property, which might tend to shorten the forms of conveyancing, and relieve titles from difficulty, than by any system of registry that I have seen.

The above is a concise statement of the views formed by me, upon careful consideration, in reference to the questions proposed by the Commissioners, and which I respectfully submit to their consideration.

4, New Square, Lincoln's Inn,
November 2, 1854.

J. T. HUMPHRY.

MR. H. BELLENDEN KER, Barrister (*Conveyancer, &c.*).—14*th November* 1854. *Mr. H. B. Ker.*

THERE can be no doubt but that the sale and transfer of land is rendered expensive by the retrospective investigation of the title. This investigation, however, in the present state of the law is absolutely necessary, in order that a purchaser may be satisfied that he is buying from a party entitled to sell, and consequently the expense relating to it cannot be avoided. Any scheme which could be devised, rendering such investigation unnecessary, would be of great value.

2. I have always considered that a registry, from which a purchaser may ascertain all that affects his title, is essential to a good system of law of real property, and I think the sale and transfer of land would be facilitated by the establishment of such a register; though for some time the actual cost of transfer would not be diminished unless the registry was accompanied by other measures tending to a simplification of the law generally. Having been one of the commissioners on the commission respecting registration, I do not here repeat any arguments in favour of my opinion; these are contained in the report.

Although I consider a system of registration essential, yet I am of opinion that a revision of the whole law of real property should take place before registration is adopted: the plan for the registry being first decided on, and the alterations and simplification of the law made with reference to such plan. This was my individual view when the last commission reported; but the majority determined to report in favour of registration first, and of alteration and revision afterwards. My opinion has always referred to a registry of deeds, but I observe that the present questions refer to a registry *of title*. I do not, however, collect precisely what is intended by a registry *of title*. I assume that it refers to a plan similar to that recommended by Mr. Wilson, or to that suggested by Mr. Cookson.

I assume that in effect by a registry of title is meant that there should always appear on the registry the name of some party or trustee authorized to sell, &c., and that a purchaser should not be bound to inquire further, leaving the only protection or remedy of the beneficial owner, and of all parties interested, to a caveat, or to a personal remedy against the trustee.

According to the best consideration I have been able to give the subject, I conceive that this species of registry could only be effected by making the registrar a judicial officer; and, as far as I can judge without further consideration, I think that such judicial registry could only be effected where the law only admits of absolute ownership.

It strikes me, looking to the nature of the dealings with real property in this country, the various interests and charges, settlements, leases, &c. created therein, that such a plan could never be successfully adopted; the ultimate result would in effect be very like that which arose after the Statute of Uses.

Although I think that such a system could never be adopted whilst real property is dealt with as it is at present, still I think great simplification might be attained in this direction by allowing parties at their option to vest property in trustees, and to declare trusts, by an unregistered instrument, and so as that a purchaser, &c. should not be affected thereby; this plan was suggested by the former commissioners, and I beg to refer to the report for an exposition of their views on the subject. I conceive that much benefit might be derived from a measure somewhat similar to the Encumbered Estates Act in Ireland.

I do not enter into a discussion of the several other questions, because I conceive that they all refer to a system which, without further explanation, I consider unadvisable.

As regards the question 5, I conceive the cost attending the transfer of land is not one that especially affects a purchaser, who, it must be assumed, in the price he gives takes the cost of transfer into consideration. The expense in fact must be considered generally, as a diminution of the actual selling value of the land.

That much might be done with regard to the simplification of the law I feel assured; my views on this subject are expressed in a printed letter to Lord Lyndhurst, and therefore I do not here attempt to go into the subject. Although I have given an opinion on the point relating to what I conceive is intended by a "*registry of title*," I am nevertheless aware that persons to whose opinion great weight is due consider that a plan for such

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registration might be successfully adopted. If such a plan could be devised, I am bound to say that it would be a great boon to the possessors of landed property; and I should undertake the consideration of any matured scheme which might be proposed, with a sincere desire to acquiesce in it, unless I thought it likely to produce more evil than good.

I should also come to the consideration of the subject with the feeling that in the framing a scheme which was to produce so much good, small technical objections must be put aside, and that no such great change could be adopted without its being open to some objection or chance of minor difficulties arising under it.

Seeing what is the express object of the present commission, it is a matter of regret to me that some definite plan has not been produced for consideration, rather than the questions now sent, from which I find it impossible to form a precise opinion as to what is proposed to be adopted.

H. Bellenden Ker.

Lincoln's Inn, 14th Nov. 1854.

Mr. Goodeve.

Mr. Goodeve, Barrister (*Equity Draftsman and Conveyancer*).—16*th November* 1854.

The questions of the Commissioners, if designed to elicit more than the mere general *opinion* of each particular individual to whom they are addressed, are difficult of separate and categorical answer.

Each is more or less dependant for its reply upon the view taken of an *entire* system, of which the subjects of interrogation, if comparatively distinct, are still component parts; and it is all but impracticable to explain the grounds upon which a conclusion is arrived at upon any specific query, without a developement of the whole principles by which, in the mind of the party answering, the matter is governed.

Before the questions were forwarded to me the entire subject had formed the matter of a paper which is now in a course of publication, in the shape of a letter to the Lord Chancellor, a copy of which will almost contemporaneously herewith be in the hands of the Commissioners, and I may perhaps be excused if I take the liberty of referring to that as a general answer to their questions.

A specific reply to particular queries may however be desired, and to this I proceed accordingly.

1. To the extent to which retrospective investigation of title is a matter of time, and the requisitions arising out of it become ground of delay, of course every transaction of sale and transfer of land is, in a sense, liable to be *impeded* by the existing necessity for that investigation. According, however, to the more ordinary course of practice, it seldom happens that a purchaser is prepared to complete until after an interval of some time from the date of the original contract, and on the whole probably, the inconvenience of the preliminary investigation resolves itself into a question of cost, rather than of substantial impediment.

Looking at the cost, either as that of the investigation itself, or as the clearing up of the title in matters disclosed by it, this may be a tax upon the sale, but I conceive it would rarely operate as an impediment to it.

Large though the cost may prove as an isolated item, and in particular cases disproportionately so, relatively to the amount of purchase money, still on the whole I suspect it would be found that, were you to take, on the one hand, the amount of purchase money paid on the transfer of land throughout the country for any particular period, say for a year, and, on the other, the amount paid for retrospective investigation, the latter would be found a very insignificant item in proportion to the former. Were it larger than I assume it to be, I imagine this item of cost would be found neither adequately defined or sufficiently prominent in itself to be present to the mind of either seller or buyer, as a matter of consideration, still less of actual calculation.

Let it be supposed, however, otherwise, and then try the question in the two opposite instances of seller and buyer.

Now, in the case of the seller, the cost only falls upon him, either so far as the preparation of the abstract of his title is concerned, and he incurs the expense of preliminary scrutiny himself, with a view to frame conditions of sale calculated to put the purchaser on terms, and economise the ultimate examination, or, failing this, as the result of the purchaser's investigation and his requisitions.

In the former instance the property must be very insignificant in point of value, and in the latter the inducement to sell of a very shadowy nature, if the cost prevent the sale. Moreover, in the latter instance, the obligation of the contract of sale, assuming it to be, as it ordinarily is, in writing, will have been already incurred.

In the case of the buyer, if the cost enter into his calculation at all, the probable result would be only in the adjustment of his price.

If the charge of the vendor's own investigation, or the requisitions arising out of the purchaser's, be not likely to operate as a preventative to sale on the part of the vendor, it may be conjectured that the reduction of price insisted on on the part of the purchaser, to meet the burthen in question, would be larger than it would be likely to be were it to terminate the transaction altogether.

On neither side, accordingly, except in very small transactions, would any ultimate impediment to the transaction itself be likely to exist; and the question resolves itself

Mr. Goodeve.

into its second branch ; viz., whether the existing investigation under the sale or transfer be more expensive than it "ought to be," which is pretty much the entire discussion.

2. In my opinion, the disposition of land is neither impeded or rendered insecure by the want of a registry either of the title to the land or of the assurances deducing it, or at all events, not substantially so.

The emergence to which I infer the question to be addressed is the fraudulent dealing with property upon one title, in suppression of some other and the true one. I believe the supposed extent of this to be very much exaggerated, and the mischief might still further be reduced by ordinary prudence.

We have no experience by which to judge what on this point would be the effect of a registry of title ; that is, in the sense of making the register the act of transfer. So far, however, as regards a register of assurances, we have the experience both of the Middlesex and Yorkshire registries, and the disposition of property is not understood to be less secure in other localities than in that of these two counties.

On the other hand, every registration of assurance necessarily adds to the complication of title, and, as I anticipate, to a still greater extent would a registration of title itself, while complication, and the occasion for adherence to particular forms and rules, carry with them an inherent chance of miscarriage, and consequent uncertainty. Uncertainty is insecurity, and insecurity is impediment.

3. I think it quite possible that in individual instances the sale and the transfer of land might be facilitated by establishing a public register or record of the title. I doubt, however, whether this would be the result, as applied to the whole land of the country, and in reference to an universal system ; and my apprehension is the other way.

4 and 5. These appear addressed to those who entertain the affirmative of the preceding question. Being wished to be understood as answering this in the negative, I abstain from giving any answer to questions 4 or 5.

6. I am not aware of any statistics and I have myself no materials upon which to answer this question with accuracy ; but I apprehend that the portion must be considerable. It varies, however, very much according to the position of the property ; as, for example, during the series of years to which the investigation is ordinarily addressed, the prior dealings in relation to it may have been extensive or otherwise. If the title could be taken up at any modern point, which the establishment of the registry in question assumes, what remains behind might naturally be cut off. But then it will be observed that these dealings often affect that very modern title itself, and if in the case of a fiduciary registration the protection of the beneficiaries is to be observed either by a system of caveat or notice, it may be that the investigation necessary to deal with these interests would still remain. This, of course, however, would depend upon the regulations of the system itself.

7. If by the practicability of forming a registry of title be meant the construction of a system which would make a registry an efficient and beneficial instrument of general transfer, I have yet to learn that any such construction is possible ; and, so far as my view can reach, it is not, If, however, in relation to such a "terra incognita," one might hazard a calculation, I should conjecture it would not be necessary to make a register of deeds and assurances a component part of it. In fact, the two systems appear to proceed on antagonistic principles.

8. As far as the matter of title to the land of the country generally is concerned, my opinion is, that a register instead of simplifying, would very much complicate it. I doubt the probability even of the original establishment of any registry, as a perfect and the requisite test and charter of title ; and I have the strongest expectation that, even if once established, the register would subsequently miscarry in its working as a practical system of transfer.

If I am right in my view, the result would be, that even with a register we should still have to fall back on collateral assurances, in order to remedy the defects of the register itself.

But, apart from this consideration, either the equitable title would be put upon the registry or it would not. In the former case, the register would be no more than the present deed of conveyance under another name, much in the same way as in the instance of copyholds the court roll of the manor becomes the medium of assurance. In the latter, collateral assurances would be necessary to define the interests of the parties, as they do now in the instance of a settlement of stock. The result would seem to be, that, with the possible exception of the only case in which you gain nothing by the substitution, viz., that in which the title itself is put upon the register, a double system is necessitated, —that of the title on the register, and that of its collateral development.

As respects the forms of conveyance, a register may dispense with conveyances by constituting itself the act of transfer, but one does not see what inherent tendency it possesses to simplify collateral forms.

9. I must leave the answer to this to the supporters of the contemplated system, upon either of its two principles.

10. To be efficient to accomplish the objects for which it is designed, a register, as it appears to me, must start as a sort of Domesday Book, and be a record, not only of all the land of the country, and of its possession, but of its ascertained ownership. To effect

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this, however, it would seem that that ownership must have received the previous stamp of some appropriate authentication; and in the instances in which it was carved out among different individuals, or in varying interests, some party must be found to appear as its representative on the register as respects each separate property the subject of registration. Were it otherwise, these interests must be put upon the register, and, the object being at the same to make registration conclusive, and save retrospective investigation, the system would appear to fail at the very threshold.

But let us suppose the register started, and the landed interest of the country like some joint stock company in which the shares of each member were inscribed in the company's books, and, when held in partial interests only, in the name of some registered representative:

In the case of an absolute owner, possibly a transfer might be effected by himself, and the party taking the transfer might have to search no further than the registration of the ownership dealt with.

Still cases would be constantly arising in which a transfer of the existing ownership would be required, and either the right to that transfer, and its propriety when made, must have undergone a like judicial authentication before the transfer itself could be received as a warranty of the title thereby conferred, or, failing this, each transfer would only form one of a series, the sufficiency of which, while it could not but exist in point of fact, would be at the peril of the party acquiring title under it, and consequently must undergo his investigation.

Take only, for example, such cases as the death, bankruptcy, lunacy, &c. of a party registered, and the consequential occasion for transfer to his representatives.

Add to this, the case of a caveat, and its removal, which would have to precede the transfer.

Unless upon the theory accordingly of every transfer conferring a warranty, it would seem impossible to carry out the principle in question to the extent of excluding the past history or deduction altogether, though the natural effect of limiting the registration to the legal ownership, and confining the investigation to this, would be to curtail the retrospective inquiry.

11. A register disclosing the deduction and history of the title would only appear to differ from a registry of assurances in so far as the principle of the transfer would be the introduction of an additional element, and with it of additional cost.

12, 13, and 14. As part of such a system, though in no other sense, and so far as I can conjecture the nature of the system proposed, it appears to me not only necessary but desirable that all forms of ownership, except those admissible to the register, should be of the nature of trusts only.

I do not, however, conceive it to be at all necessary to the operation of such a system to leave either equitable interests or trusts to the protection of a special provision, or as matters of mere personal confidence simply enforceable accordingly against the registered owner; and in my view most assuredly it is not desirable to do so.

To trust all equitable interests to the mere protection of a special caveat would be to leave them to an immense extent unprotected, and to expose them accordingly to peril.

To withdraw the protection of notice from the land itself, even though acquired otherwise than by special caveat, would, in my opinion, be in the most direct way to fling open a door to fraud and spoliation.

To confine the remedy to a mere personal one against the party committing the fraud would, as it appears to me, be in opposition no less to the most ordinary demands of prudence than to the elemental principles of our law.

15 and 16. I leave the answer to these two questions to those who may maintain their affirmative.

17 and 18. So great is the chance of miscarriage, even in the best devised system,—so manifold are the interests not in a position either to permit or to induce their possessors actively to seek the protection,—and so varied and so multiplied are the circumstances under which, passively, protection is omitted to be sought, even by those in a position to obtain it,—that there is no proceeding within the scope of my conception, nor any which it appears to me the nature of the case would admit, capable of affording the protection in question.

19 and 20. Be it the distringas, or whatever else it may be, which is to be the protection, in my view that protection should be as universal as the interests requiring it. An interest, even though less immediate or less relatively large, is an interest after all, and, perhaps, more important to its possessor than the one which is either more direct or of greater pecuniary amount.

21. This is a question of some difficulty. If the terms "define" or "describe" be used in the sense of accurate definition, any attempted definition of the interests opens the door to the peril of miscarriage from failure in the requisite accuracy. On the other hand, merely to point out a party as having an interest might invite embarrassment, at the instance of a litigious or hostile claimant. Of the two evils the latter would probably be the less. Were it not for the difficulty of finding words of classification of sufficient import to comprehend the various modifications of interest requiring the protection of a distringas, some general term might be resorted to, as, ex gra., "mortgagee,"

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"portionist," "judgment creditor." On the whole, perhaps, the best form of distringas would be that of which the case of stock affords the analogy.

22. The only efficient security would appear to be the voidability of the sale as against the interest protected by the distringas.

23. Short of the establishment of some tribunal to try the question of authority, (were such a measure either practicable or desirable), there would seem to be no adequate means of testing the authority or evidence in question, and the result would be that the only protection against an improper or unauthorized distringas would be the hazard of the costs involved in the step.

24. None, beyond the retention of the doctrine of notice; and with that and the caveat combined, the protection, I conceive, would be incomplete.

25. Yes; and so familiar to the Court are the instances, that the accident of stock or other convertible property coming by reason of vacancy in the trust to the control of a sole trustee, is ordinarily recognized as in itself sufficient ground for filling up the vacancy, without further ground of actual jeopardy.

26. It is, in my opinion, highly objectionable to vest the ownership in the way suggested by the question, even regard being had to the considerations to which attention is there called. I should arrive at this opinion even upon the ground of the risk to which it would expose the beneficiaries. But, in my view, this risk falls far short of the whole mischief involved in the operation.

27. In my opinion the security of both settlements and trusts would be unduly impaired by the means suggested in the question, and that to an enormous and almost destructive extent.

28. In my view, it is difficult to say which is the most impracticable of the two, to attain the requisite accuracy or security without resort to the map in question, or to frame that map itself.

29 and 30. The ascertaining the accuracy of the description and identity of the land would seem to lie at the threshold of the whole registration system. To leave what, under the name of description or identity, would more or less involve a question of actual ownership, to the sort of investigation involved in a reference to a registrar, acting merely ministerially, and to confine an investigation fraught with such results to any such functionary as a registrar is likely to be, even if endued with judicial powers, would appear an anomaly of no small magnitude in the jurisprudence of the country.

In the former case it would be to intrust to a mere ministerial officer, and upon a proceeding more or less ex parte, what seems rather the province of a court, and fitting to go forward in the presence only of all (be they however remote) interested. In the latter case, powers would be conferred on a comparatively inferior functionary, which would be more appropriately exercisable, only by the higher order of courts and the higher order of judges.

31. If I might hazard a conjecture, it would be found, practically, that, were the registration left to be voluntary, there would be few who would resort to it. Unless, accordingly, it was made compulsory, there would be two opposite systems of transfer going forward at the same time,—than which few things would seem more objectionable.

32 and 33. Be the era what it may at which the parliamentary title is to commence, it would seem essential that some preliminary authentication should precede the placing it on the register. Mere lapse of time might alter the position of the title, but it might also even complicate rather than reduce it to a point, and years must elapse before time could obviate the occasion for retrospective investigation. So far as I have been able to form an opinion, it would seem that if registration were to be made to confer title at all, it should do so at the outset.

"How claimants, and the nature of their rights, are to be ascertained?" I leave it to those who have arrived at the mode to state it.

Lincoln's Inn,
16th November 1854.

JOSEPH GOODEVE.

Mr. J. L. Kettle.

MR. J. L. KETTLE, Barrister (*Conveyancer*).—18*th November* 1854.

1. THE retrospective investigation of titles is rendered so tedious and expensive by our present intricate system of conveyancing, that it unquestionably impedes sales and transfers; but if, as I feel convinced is possible, that system were so simplified as to make such retrospective investigation cheap, speedy, easy, and certain, it would not only cease to be an evil, but would afford the best security for titles.* At all events, the principle is the established one of the country, and, so far as regards security, the public are satisfied with it; for the evils they practically feel are the expenses and delays, not the insecurity, of our present system; and I am of opinion that they would consider the removal of these evils dearly purchased by an abandonment of any of those safeguards which they have from time immemorial relied on, and have found to be practically sufficient for their protection.

* See answer to Question 8. p. 2.

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2. Theoretically, some method of registration appears necessary to afford absolute security, and even the defective plan adopted in Middlesex and Yorkshire is considered to add to the safety of titles. Unless, however, registration accompanies or follows a simplified system of conveyancing, it will do little good; and a mere registration of assurances, such as was proposed in Parliament last year, would, if ingrafted on our existing system, cause great evil, by rendering it even more cumbrous and expensive than at present.

3. In order to answer this question, it is necessary to consider what is meant by a "register of titles." In my opinion registration would be valueless unless established on a system which would enable a purchaser or mortgagee to ascertain almost at a glance to whom he had to look for a good title. If such a system can be devised (as I feel confident it may be) sales and transfers of land would be very greatly facilitated; but in my answers to other questions I hope to show, that, in order to obtain this great boon, it is not necessary to plunge into all the dangers, known and unknown, which would be occasioned by altering a fundamental law, and making a man hold his lands, not by the deeds which conveyed it to him, but by an entry in a register, or a registrar's certificate.

4. I think an improved system of conveyancing and of registration would give increased facility to sales and transfers, by rendering the investigation of the past title cheap, easy, speedy, and certain, by diminishing the length and consequently the costs of conveyances, and by giving buyers the assurance that they would in future be able to deal with the land easily and inexpensively. The uncertainty they now feel on this last point impedes purchasers of small estates to an extent not generally known. As an instance, I may mention that it is a very common practice with conveyancers, when preparing marriage settlements of moderate sums of money, to object to the insertion of the ordinary clauses enabling the trustees to purchase land; for, in all probability, it will have to be resold at no very distant time for the benefit of the children, whose prospects may be seriously affected by such investments, as the costs of the purchase and sale are often greatly out of proportion to the value of the estate, and no one can tell beforehand what their amount may be.

5. An improved system of conveyancing would *directly* benefit both seller and buyer, by shortening the abstracts and evidence of title, which the one has to furnish, and the other to investigate, and by diminishing the length of conveyances; but ultimately the expenses, as a general rule, fall almost exclusively on the vendor; for a prudent purchaser naturally allows for the anticipated costs in the price he offers for land, and, as he cannot foretell the amount, he not unfrequently makes too high an estimate, to the obvious injury of those vendors who can show simple and inexpensive titles. In one respect, however, buyers will derive direct advantage from an improvement in the present law, as of course all their subsequent dealings with the estate will be simplified and cheapened.

6. With the exception of the stamp duty, and the necessary expense of the conveyance (which if divested of recitals would be very short and cheap), almost the whole costs of a purchase appear to me to be occasioned by the necessity of minutely investigating all the dealings with the estate which have taken place for a long period,—of requiring various parties to join in the deed of transfer, whose concurrence ought to be made wholly unnecessary,—and of inserting lengthy recitals for the purpose of explaining what the respective interests of these parties may be.

7. If by the registration of titles, as opposed to the registration of assurances, is meant such a system as will at once inform a purchaser or mortgagee what parties can make a good title, without imposing on him the necessity of ascertaining, as at present, the contents of the assurances affecting the property, I think it quite practicable to establish such a system on a very simple plan, and without altering a single principle of our existing law of real property.

8. Such a register as I have above referred to would be greatly instrumental in simplifying the title to land, and the forms of conveyance; and I will endeavour, though necessarily at some length, to explain its nature, and how this effect would be produced.

Every one acquainted with conveyancing is, of course, aware that almost all freehold estates are held by a double title, and that, until a recent alteration in the law, purchasers and mortgagees were in the habit, not merely of taking a conveyance of the fee simple to themselves, but also of requiring outstanding terms of years to be assigned to their trustees, so that, if the title to the fee failed, they might fall back on the terms for protection. It became, therefore, as important to show the title to the term as to the fee itself, but the process of doing so was greatly simplified and cheapened by the following fact: Whenever a trustee of a term died, it vested, for the purposes of transfer, absolutely in his executors or administrators, VIRTUTE OFFICII, so that it became quite unnecessary to look into the will, whose contents could not affect the term, and all that a purchaser had to do was to ascertain who was the executor or administrator. On referring, therefore, to an abstract of the title to one of these terms, it will be seen that, whenever it passed by a will or intestacy, nothing was set forth besides the date and probate, and the name of the executor or administrator, so that a title for a hundred years might be shown on half a page, and traced with scarcely the possibility of a mistake. This arose from the simple fact, that the executors or administrators took the term VIRTUTE OFFICII, and not under any bequest in the will, and, consequently, lawyers had no excuse for looking into and making an abstract of the document, or raising doubts as to its effect. And the

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same principle has long been in beneficial operation with regard to another kind of property, viz., leaseholds for years, for when a man dies possessed thereof he cannot by any words in his will (however efficacious they might be to tie up his freehold estate) prevent his executors or administrators from selling his leasehold property, and making a good title to a purchaser; for the law assumes that it may be necessary to sell in order to pay debts; but it is not obligatory on a purchaser to ascertain that any debts are due, and, consequently, he has only to learn who are the executors, when he at once feels certain that they must have a power of sale *virtute officii*. Hence, though freeholds and leaseholds may have passed under the same bequest the title to the latter is simpler and cheaper than that to the former, and no evil has been found to result from the power thus given to executors and administrators, as is sufficiently proved by the fact, that no proposal has been made to limit it, notwithstanding all the alterations which have recently been made in the law respecting wills. What I would now, therefore, propose, is, that this principle, which has so long been in such general operation, should be extended still further, and applied to all assurances, whether deeds or wills, transferring freehold or leasehold property; and if on the law thus simplified a rational system of registration be ingrafted, the result will be, that purchasers will hereafter ascertain, at a glance, who can make a good conveyance of the estate; and no landowner will be able, BY ANY POSSIBILITY, *to complicate his title as against a purchaser.*

In order to prove the truth of these assertions, I will now proceed to show how the plan I recommend, though equally applicable to other systems of registration, would work if applied to that adopted in Middlesex and Yorkshire; for, however defective that system may be, from the experience of a century and a half we know the worst of its effects, and two such counties would never have borne with it so long if it had done any perceptible harm, or had not done some good.*

Under the existing law, the registrar is bound to enter a memorial of every deed or will which may be sent to him, and to state therein the date of the assurance, the names of the parties or testator and of the witnesses, the description of the parcels, and the consideration. In addition to this, I would provide as follows:

1st. That all persons executing deeds or wills transferring land should have power to name persons whom, for distinctness, I will call "protectors" thereof, and who should necessarily take, *virtute officii*, full power to transfer whatever interest in the land the persons executing the deed or will had power to dispose of, except in cases where a term of years was created, or a lease or rentcharge granted, when the power of transfer vested in the protectors might be expressly limited to the term or rent-charge, and the person taking the power be distinguished on the register by the title of "limited protector."

2d. That in entering a memorial of any deed or will expressly appointing a protector the registrar should set forth his name and description.

3d. That in cases where a deed or will did not name a protector, the registrar should either refer it back to the parties, or himself appoint one, under similar restrictions and on similar principles to those which regulate the appointment of administrators to wills in which no executor is named. [It is obvious that this would throw no very onerous duties on the registrars, because the law would soon be known, and a protector always appointed, or if parties neglected so simple a duty they would only have themselves to blame for any little expense or trouble which might be occasioned thereby.]

4th. That on the death of a sole protector his powers should pass to his personal representatives, unless he should in his will expressly name a protector in his place.

5th. That any transfer made by the protector or protectors of any assurance should, except in cases of fraud, *be good against every person claiming under such assurance*, unless the rights of such person should have been previously protected by a limited protectorate, or a distringas entered, on some such principle as I shall hereafter have to refer to in answer to questions 21 et seq.

6th. That, subject to certain obvious provisions against fraud, registered should have absolute priority over unregistered instruments, without reference to notice, direct or constructive.

7th. That the registrar should be empowered, on application, under certain restrictions, to make summaries of titles, as shown by the register, *down to a certain period prior to the application*, and that such summaries should be conclusive evidence of the truth of statements therein contained. [I do not consider this power necessary. I have further explained and shown how it may it may be limited in answering the 33d question.

If we now consider the effect these provisions would have on the county of Middlesex, it will at once be seen what vitality they would breathe into the sluggish system now in operation there, by simply *remedying the radical error which engrafted registration on a complicated law of conveyancing.* As a brief illustration of this, I will imagine the case of a sale of land under very ordinary circumstances, and compare the course which is now followed with that which would be requisite under the new mode; and with this view I will assume that A., having purchased an estate in fee simple, grants a lease to B., and then mortgages to C., who transfers his interest to D.; and afterwards A., on his

* Of course, as these answers are addressed to lawyers, it is not necessary for me to show every detail of the scheme.

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marriage, conveys to the use of himself for life, with remainder to his first and other sons in tail, subject to a term, which he limits to E. and F. as trustees, for securing a jointure to his wife and portions to his younger children; then A. dies, and G., his eldest son, bars the entail, and proposes to sell, with the concurrence of his mother, for the purpose of paying off the portions. As the law now stands, very great expense would be incurred by G. in preparing lengthy abstracts of the mortgage to C., the transfer to D., the settlement, and the disentailing deed, and in procuring the execution of the conveyance by the mortgagee, the trustees, and other persons interested; while the purchaser would incur even heavier costs, in examining the abstract, and comparing it with the deeds and the register, and in ascertaining the truth of various statements relative to the private affairs of A.'s family, with which he has no connexion whatever, and, finally, in drawing a conveyance, full of recitals, introduced for the purpose of explaining why so many of the above-mentioned persons were parties thereto. Nor would the evil end there; for on every occasion of transfer, for, perhaps, half a century, other purchasers or mortgagees would require, at the same costs, the same information, on the same points of title, which had been already so fully investigated at such serious expense. But, under the system I have ventured to recommend, all these evils would be swept away; for, exclusively of the description of the lands, and the particulars of the lease to B., *the abstract would not fill half a page*, as it would contain merely an epitome of the registered memorials, showing that A. was named the protector of the first deed, that he joined in the second deed, of which B. was limited protector, and in the third, of which C. was absolute protector, and that C. joined in a further deed, of which D. was protector. Without looking further, therefore, into any of these deeds, it would be clear that, *whatever might be their contents*,* D. must necessarily have power to sell everything which had originally vested in A., the first purchaser, subject only to the limited interest protected by B., the lessee. But D. being only a mortgagee might not wish to take upon himself the responsibility of the sale, or might be prevented by a distringas entered for the protection of the interests created by the settlement, in which case the abstract would proceed to show that another deed (the settlement) had been registered, whereof E. and F. were protectors, (or, if it had been so arranged, whereof E. and F. were limited protectors, in respect of their term of years, and J. and K. were absolute protectors,) and therefore all that could be required would be that *all* these protectors should join in the conveyance†; but, whatever their number might be, *so far as respected the purchaser*, the transaction would be perfectly simple, for, on examining the abstract and register, he would see at a glance who the protectors were, and would know that, VIRTUTE OFFICII, they must have power to sell, and whether the sale were made by two or six protectors would affect him as little as it affects a purchaser of stock to find that it stands in the names of a number of trustees, instead of that of the individual who contracted to sell it. Whatever onus or expense might be incurred in procuring the concurrence of the various parties would fall, as it ought in justice to do, on those by whom or for whose benefit the estate had been incumbered with mortgages and settlements, precisely as is the case in money settlements, when the trusts are terminated, and the stock sold by the trustees at the request of those for whose benefit it was held.‡

I am unwilling to occupy space and time in giving further illustrations§, as I trust I have said enough to show how the law of conveyancing may be rendered absolutely simple; and I will now proceed to point out how my system avoids the difficulties and dangers besetting the various plans which have recently been brought before the public.

1st. I do not introduce any new machinery or alter any principle of established law, except, perhaps, by giving absolute priority to registered instruments; a point on which all the schemes seem to agree.

2d. *No official interference will be rendered necessary*, beyond the exact degree which the experience of Yorkshire and Middlesex assures us the public will cheerfully endure, for an adequate consideration. This I consider a point of the very last importance; but I shall have to allude to it more at length in my reply to question 30.

3d. I do *not* do away with the necessity of a retrospective investigation¶ of titles, which, if rendered cheap, speedy, simple, and certain, I will now show to be a positive good instead of an evil; for no human system can be absolutely perfect, and, consequently, if any scheme were adopted forbidding a purchaser to look further into a title than the last entry on the register, it must still occasionally happen that mistakes would occur, and that A. might become registered as the owner of an estate which really belonged to B.; consequently, on A's selling to C., the title of the latter would of course

* The answer to the 26th question shows that the power thus given to D. is no greater than which is now always given to mortgagees.

† It is obvious that even this process, simple as it is, would be still further simplified if the registrar were allowed to make such summaries of title as are suggested, p. 368.

‡ The expense of the vendors, moreover, would be very greatly lessened, and reduced to about the same amount as is now necessary when stock is to be cleared of the trusts of a settlement.

§ The best test of the system would be, to submit to me an imaginary case of a very complicated title, in order to see whether it would not at once become simple under my process of conveyancing.

¶ If the system of making summaries of titlewere adopted, the investigation would be reduced to almost nothing, though the principle would be preserved.

be complete, as the law would have forbidden his making any inquiry calculated to show that the true right was in B.; no one, however, dare suggest that B. should be entirely robbed, and so it is proposed that the state should give him compensation, and thus turn itself into a sort of office for the insurance of titles. But I am assuming that B. has been guilty of no fault or neglect; and therefore what right would the state have to offer him a pecuniary compensation for his family estate, which has been lost, perhaps by the fault of their own registrar, who chose to be satisfied with insufficient evidence of his death? Surely the present law is more just, which would give him back his land, and leave those who acted in error, however innocently, to suffer by the consequences. Again, the proposition that the state should insure titles, though a necessary part of the scheme I am adverting to, is obviously wrong in principle, and impracticable; for the true province of the legislature is, not to insure, but so to simplify and cheapen, titles, as to render mistakes almost impossible, if due care be taken; and if persons will act ignorantly or rashly they ought themselves to bear the penalty, and not to look to the state for aid. Moreover, if the state is to insure they must previously investigate titles; so that no transfer could be safely effected without the sanction of a government officer, given after careful consideration; a necessity which would be utterly intolerable to the public. But to this point I shall have to allude in my reply to question 30.

4th. I confine registration to its proper province, which is, and has in this country always been considered to be, a subsidiary one. I leave a man to hold his lands under his deeds, and make the register act chiefly as a check, so that purchasers will have a double* guard, and may detect an error in the one by reference to the other; whereas under other systems an error in the register alone would be fatal.

5th. I don't take away the title deeds from their owners; a point on which the habits (or, if you will, the prejudices,) of the people render them extremely tenacious.

6th. I do not propose that a proprietor shall register little sham deeds, while the real dealings with his estates are carried out by other instruments which are unregistered. On the contrary, I would let him register the instruments which actually affect his property, but on such a principle, that, however long and complicated they may be, they will, for the purposes of registration and facility of future transfer, *be shorter and simpler than the shortest sham deed;* for, previously to a purchase being made from a person holding apparently under these sham deeds, it would be necessary closely to examine every portion of them, in order to see that they are drawn in proper form, and that no part of the instrument limits the effect of the rest. Here then are found in limine the old grounds of uncertainty and excuses for expense; while, under the system I have proposed, the protectors, by whom conveyances will be made, take their power of transfer (as I cannot too strongly repeat) *virtute officii,* and, consequently, the moment you have ascertained from the deeds and the register who the protectors are, you will know, without further reference thereto, that they MUST have power to transfer the property.

Again: the sham deeds would, in cases of settlements, cause much inconvenience and embarrassment, by giving the whole legal estate to the trustees, and leaving to the tenants for life and reversioners merely equitable interests; whereas I would give the protectors, *as such,* merely a power of transfer, without any interest whatever, and leave every other person in precisely the same position and in the enjoyment of the same legal rights as under settlements executed on the present system.

7th. My plan of registration will occasion no further disclosure of the affairs of private families than we know from the experience of Yorkshire and Middlesex proprietors are willing to submit to.

8th. I would make one law for the whole country, and would not adopt that highly objectionable system by which it is proposed that some proprietors may bring their estates within the pale of registration, and others, at their option, remain unaffected thereby.

I will now proceed to answer the other questions of the Commissioners.

Question 9. The register would not expressly show any forms of ownership, but merely the names of the protectors, who would have power, *virtute officii,* to convey all the property comprised in the deed which the parties to the deed were entitled to dispose of. In the case of leases, where a limited protector was named, it would of course be necessary to set out in the abstract, but not in the register, the terms of the lease, it being obvious that there must under any system be more complication in dealing with leasehold property than with estates in fee, for every one knows at once what a fee simple is, but no one can possibly tell, except by inspection of the deed, what may be the terms of a lease.

10. I have anticipated this question in my reply to question 8, where I trust I have said enough to show, that if the retrospective investigation of title be made simple and cheap the security it affords is founded not merely on the best but on the only just principles.

11. I presume that by a register of assurances is meant a register founded on the principle proposed last year in Parliament; and I think even that system would practically have become also a register of titles if the principle I have suggested had been applied to it,

* Of course, if it were thought proper to make the register the sole title, it might be done, on the system I have suggested; but such an alteration in our law is quite unnecessary.

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and the registrar been compelled to enrol the name of a protector to every assurance, who would take *virtute officii* a power of sale; for every purchaser would at once have seen who could make a title to the land, without examining the deeds, further than to ascertain the name of the protector. It would, however, in my opinion, be unnecessary and objectionable to register the whole of an assurance, or to require proprietors to give up their title deeds.

12. I would in no way alter the law in respect of the legal estate now usually given under settlements to tenants for life and others, but would leave them precisely in the same position as at present, and only give to the protectors of a settlement *virtute officii* the same power of sale which the trustees now take under the express words of the assurance.

13. The registered protector should have power to sell the land free from all claims arising under the deed appointing him to his office, except so far as such claims were guarded on the register by a limited protectorate, or a distringas.

14. Again I repeat that I see no occasion to disturb the existing law or practice of conveyancing with respect to trusts and equities, which, even though unprotected on the register, should confer the same right as at present against the land, subject only to the power of transfer vested in the registered protector, just as they are now subject to the same power almost invariably given by the deed of settlement to trustees.

15. Trusts and equities might be effectually guarded by a limited protectorate or a distringas, so as to prevent the protector from transferring the estate otherwise than subject to the guarded interests.

16. I have already stated that settlements would be affected in no way whatever, except that the protectors would take a power of sale *virtute officii*, instead of taking it, as they now do, by the express terms of the deed, and the persons beneficially interested might have the protection of a distringas, which they cannot obtain at present.

17. I think "a distringas, &c." would afford a sufficient protection to settlements, if parties thought fit to use it. The chief objection to this system is, that they would often be unwilling to use it, as by so doing they would show want of confidence in their trustees, the protectors. On reference, however, to my reply to question 24, it will be seen how, by appointing two sets of protectors, the one might be made a check on the other, and a security thus obtained which would be free from the objection above referred to as applicable to the distringas.

18. I do not see why a man should not be allowed to take a transfer subject to a distringas, if he thinks fit to do so.

19 I think no distringas should prevent a transfer, subject to the protected interest.

20. I would allow any one to obtain a distringas on land in the same way as on stock. Practically, no inconvenience would result in the one case more than in the other.

21. I think it would be advisable to allow more than one kind of distringas. For instance, there might be a very simple form, which would exactly resemble that now in use with respect to stock, and entitle the person obtaining it to a short notice of any intention to transfer the estate affected by it. But if a person preferred a higher kind of security, and was willing to pay a larger fee, and to specify the nature of his claim, I would give him a longer notice of any intention to transfer, and would let it be sent to his attorney as well as to himself; and if no answer was received I would authorize the registrar to look into the specification, and if, in his discretion, he considered there were grounds for so doing, to extend the time for a limited period, and meanwhile make inquiries as to whether the notice had been received, &c. I would, however, allow no distringas to have effect under any circumstances beyond a fixed time after the first notice was sent, and would leave the whole question to be settled by the vendor, irrespectively of the purchaser.

22. If I sell a life interest in stock protected by a distringas, I have to withdraw it, and the purchaser obtains another in his own name. It appears to me that a similar course might be pursued with respect to a distringas on land.

23. I have already said that I would allow any one to put a distringas on land, just as he may now do on stock.

24. At present it is usual in a settlement of land to have two sets of trustees, and A. and B., the releasees to uses, take a power to sell the fee, while C. and D. are trustees for a term for raising portions, &c. I would allow this system still to continue, so that A. and B. might be registered as absolute protectors of the fee, and C. and D. as limited protectors of the term, in which case one set of protectors would obviously act as a great check on the other in case of a fraud being contemplated. I think, too, after mature consideration, that, without encumbering titles to any important extent, this system of limited protectorates may be carried still further, and applied *to tenants for life or reversioners*, who would thus retain all the security they have at present; but I do not consider this extension of my principle by any means *necessary*.

25. I think the instances of misdealing with stock very few, considering how seldom the protection of a distringas is resorted to. Those of misdealing with money are more numerous, for the reason which, if the law regarding stock and land were assimilated, would cause misdealings with the latter to be less frequent than with the former; for in one case a dishonest trustee would necessarily come into contact with more persons and under circumstances more likely to create suspicion than in the other.

26. I see no reason in any way to alter the forms of ownership, as all I would give the

registered protector, *as such*, would be a power of transfer, which might safely be granted both in settlements and mortgages, subject to the liberty purchasers would have of protecting themselves in the manner above suggested. Indeed it is utterly impossible to give a power of sale more *elaborately absolute* than that now contained in every well-drawn mortgage deed; and as landowners do not hesitate to give this power to mere money lenders, of whom they know nothing, they cannot reasonably object to confide it trustees of their own choosing, and on whom they may impose the check of a distringas or a limited protectorate.

27. I feel sure that the security of settlements and trusts would not be practically impaired by the adoption of the system I have suggested.

28. I think it would be most dangerous and objectionable to make a man's title depend on the accuracy of a public map, and I by no means consider any map at all *necessary* for the purpose of registration, though in large towns it might be an useful adjunct, not for the purpose of identifying estates, but for enabling purchasers more easily to distinguish between persons of the same name. For instance, if the parish of Marylebone were mapped, and divided into six districts, I should of course know in which district the property I wished to purchase was situated, and if the vendor's name should be John Jones, it would be easier to ascertain what dealings he had had with the estate than would be the case if the whole parish had formed one district.

29. I would give the registrar nothing more to do with respect to the description and identity of the land than he now has in Middlesex and Yorkshire. To throw on him any discretion with respect either to parcels or title would, in my opinion, be most objectionable, for the reasons stated in my reply to the next question.

30. I feel sure that there is no feeling more strongly rooted in the public mind than hatred of official interference with their private affairs, and any system is *practically impossible*, however theoretically perfect, which would render the approval or sanction of a registrar necessary for the completion of transfers, or would give him any discretionary power to prevent them. *The experience of Middlesex and Yorkshire at least teaches us one invaluable lesson*, by showing what amount of interference landowners will cheerfully submit to. The registrar AS SUCH must be a mere clerk bound to register every assurance presented to him so soon as he has ascertained the necessary particulars. And a moment's consideration will show that the strong feeling I have alluded to, though perhaps in other instances carried too far, would in the present be fully justified; for there must of course be many registrars, and they could not all be men of a very high class of attainment; yet, if the responsibility of approving of transfers should be thrown on them, the delays, expense, and positive stoppage of business necessarily occasioned by even the best of these officers would obviously be very great. Add then to these certain evils those which must occasionally result from ignorance, stupidity, conceit, malice, timidity, and the imbecility of old age, and I think no one will for a moment doubt that in this particular point, at least, the example of the register counties *must* be our guide.

I think, however, that although no discretionary power over transfers should be intrusted to the registrars, *as such*, certain new powers may with advantage be given to competent law officers, who may at the same time discharge the duties of registrars. My chief object in granting these powers would be to enable landowners to clear their titles prior to the introduction of registration, so as to enable them to derive immediate benefit therefrom. To this subject I shall have to revert in my reply to question 33.

31. No man would be bound at once to come forward and register his title; but registration would be practically compulsory on the occasion of any new purchases or mortgages, as I would give registered absolute priority over unregistered instruments, subject only to certain provisions against fraud.

32. I think it quite unnecesary, and contrary not only to established practice but to sound principle, to give a warranted or parliamentary title.

33. No good system of registration can, in my opinion, be made *directly* retrospective, but its estabiishment would confer far greater immediate benefit than may at first sight appear. I can remember that when it was proposed to do away with attendant terms, many persons contended that half a century must elapse before much benefit would be felt, as the former title to the terms would still have to be traced. The result, however, has been widely different, as it was in some way contrived that these terms should *disappear* to a very remarkable extent, so soon as it was found to be to the advantage of landlords that their titles should be cleared of them. On the same principle, I have no doubt it would soon be found that practically most titles would commence from the establishment of registration; and the prior title having been once satisfactorily proved, would afterwards be taken for granted. I think too that the legislature might assist in several ways in carrying out this object, particularly in the following:—I see no sufficient reason why landowners should not be allowed *to draw up a summary of the effect of their title deeds*, and to prove the correctness of that summary to some competent officer, after which the document, when endorsed by him, might be considered conclusive evidence of the statements therein contained. Perhaps, however, it would be advisable to leave open the question as to whether the signatures were forgeries, as practically it would be very easy to satisfy purchasers on that head. At all events, there could be no objection to providing that after an authorized summary of title had been shown by a vendor to a purchaser, if

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the latter thought fit to inquire into its correctness he should bear the expense of doing so. I think too that, as before suggested, even after registration had been established, the registrar might be authorized, on the application of a landowner, to make a summary of his past title down to a certain time prior to the date of the application, and on this summary being entered on the register it should have the same effect as that which I have suggested may be allowed to summaries of title prior to the establishment of registration. It will, however, at once be apparent that if this suggestion should be approved and carried into effect, every advantage would be obtained which is offered by the plans for doing away with the retrospective investigation of title, while no single principle of the existing law would be touched.

In conclusion, I beg to add, that the suggestions I have ventured to make have at least been maturely considered, the germ of them having been treated of in two pamphlets I published last year in the form of letters to the Lord Chancellor and Mr. Evelyn Denison. Since that time I have subjected the plan to every test which could be devised, either by myself or others better calculated to judge of its efficiency, and the result appears to show that the principle is sound, and that after its adoption, although landowners would still *hold* and deal with their estates precisely in the same way as at present, *they never could by any possibility complicate titles* so as to render their investigation unsafe, difficult, expensive, or tedious. If, however, the correctness of this assertion be doubted, any one may easily test its truth by submitting to me any case of a complicated title; *and if I cannot at once show that on my system all complication would be at once removed*, as far as regards a purchaser or mortgagee, of course the scheme is hollow, and unworthy of further attention. As this test is so easy and simple, I trust it will be applied; and should the result be what I anticipate, my plan will have this peculiar claim for adoption, that it alone in no way affects the principle of our existing law or our mode of settling estates, nor does it introduce any new or complicated machinery, to the use of which our workmen are unaccustomed. I merely propose to extend to *all* transfers of freehold or leasehold property a principle which has long been in extensive though partial operation with respect to both.

2, New Square, Lincoln's Inn,
18th November 1854.

J. L. KETTLE.

Mr. W. Shaen.

Mr. W. SHAEN, *Solicitor.*—22d *November* 1854.

1. EVERY artificial and unnecessary impediment, or expense, in the sale and transfer of land is of course an evil; the answer to this question must therefore depend entirely upon the possibility of devising a safe scheme, under which the retrospective investigation of title at present necessary may, to any considerable degree, be either dispensed with, or facilitated. If any such scheme can be devised, it will undoubtedly be of considerable advantage to the community.

2. The disposition of land is certainly impeded by the actual expense of conveyancing transactions; and therefore, it would be facilitated by any scheme of registry which should diminish that expense.

I am very doubtful whether any such scheme would perceptibly render the disposition of land more secure.

3. I think that the sale and transfer of land would be facilitated by establishing a public register, or record, of the title to the legal estate only in land, according to the plan which has been put forth by Mr. Cookson. I am quite convinced on the other hand, that the sale and transfer of land would be greatly impeded, and rendered much more expensive, and insecure, by any system of registering all the assurances affecting the equitable and beneficial interest in land; more especially if those assurances were registered at full length.

4. A register of the legal estate only would afford increased facility for sale and transfer, by avoiding all that portion of the retrospective investigation of the title which depends upon equitable as distinguished from legal interests. It would, probably, also diminish the expense of the mere transfer of land; and it would also tend to make the buyer more secure, by diminishing the chances of some outstanding hostile interest being overlooked.

I can see no reason to doubt, that, in all these points, any scheme for the registration of all assurances affecting land would very greatly increase all the difficulties at present impeding its sale and transfer.

5. Under such a scheme as that under consideration, the expense would be diminished both to the buyer and to the seller; because all the proceedings, including agreement for or conditions of sale, the abstract, the investigation of the title, and the deed of conveyance, would be rendered much more simple.

6. It would be extremely difficult to fix any average; but the proportion may perhaps vary from one third up to three fourths.

7. I am of opinion that it is practicable to form such a register.

8. A register of title would be instrumental in simplifying, generally, the title to land, and the forms of conveyance, if it took cognizance only of the legal estate; leaving all equitable interests to be provided for in the way in which at present they are provided for with respect to all personal estate; as, for example, the public stocks, and shares in public companies.

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9. I think that all vested legal estates, and only such, should be put upon the register.

10. It would seem to be essential to the purposes in view, to adopt the principle of exhibiting only the present actual and existing title; and in this way a retrospective inquiry might be avoided, except for the purpose of investigating charges of fraud.

11. Even if the register should disclose the deduction and history of the title, it would differ essentially from any registry of assurances that has been hitherto suggested, in taking cognizance only of the legal estate.

12. It would be necessary, as part of such a system, to provide that all forms of ownership, except those admissible to the register, should be of the nature of trusts only.

13. and 14. It would be necessary that equities and trusts, except when protected on the register, should not confer any right as against the land itself in the hands of a *bonâ fide* purchaser; but they might be enforceable as against the land, while it remained in the hands of the registered trustee owner.

15. Trusts and equities, intended to affect the registered owner, might be protected on the register, consistently with the other objects above mentioned, by distringas, caveat, or stop order, so as to prevent the registered owner from transferring the land, while such protection should exist; or from transferring it otherwise than subject to the protected interest.

16. The existing system of settlements, by which the limitations and trusts of the settlement modify and become part of the title, could not be continued consistently with the principle of a simple register of title; or with the above-mentioned objects proposed in the register.

17. I think that settlements, trusts, and equities would be adequately protected by allowing the parties interested under them, or any next friend, to put a distringas, caveat, or stop upon the register; or to take some other proceeding in the registry office of a similar nature.

18. The great difficulty in such a scheme of registry as the above lies in the fact, that whereas in the case of funds, stock, or shares a pecuniary indemnification is always adequate compensation for loss, on the other hand, with regard to such properties as family estates, it would often happen that no pecuniary indemnification would be adequate compensation for loss. Bearing this in mind, it would probably be expedient to devise one form of distringas, &c., which should have the effect of altogether preventing a transfer while uncancelled; while the transfer in other cases might be permitted to take place, subject to the protected interest.

19. It would probably be found possible to provide that interests which were merely securities for money should not so operate as to prevent a transfer; while what might be called beneficial ownership of the land itself, might operate so as altogether to prevent a transfer while uncancelled.

20. I am inclined to the opinion that all equitable interests, &c. should be allowed at all events the minor degree of protection suggested above.

21. I am of opinion that, as in the case of a distringas upon stock, the register should state only the name and address of the person putting on the distringas, &c.

22. The benefit of the distringas, &c. might be transferred to a purchaser in the way it is at present done in the case of a distringas upon stock; that is to say, the first distringas should be discharged and another substituted.

23. As the distringas would in itself confer no title, but merely give a claimant the opportunity of proving one, I see no reason why any evidence should be required beyond such an affidavit as is necessary to support a distringas on stock.

24. It is deserving of consideration whether every registration might not be made to indicate the names and addresses of all persons to whom notice of a meditated transfer should be given. In this way it would be possible to avoid subjecting a beneficiary to the painful embarrassment of choosing between the risk of loss, and the probability of giving offence to a trustee.

25. I consider that there are very few instances of misappropriation or misdealing by trustees of stock or money, involving loss to their beneficiaries, considering the enormous amount of property which is so held.

26. I consider that the infrequency of such cases is a strong argument in favour of the safety of extending the system to real property.

27. I do not think that such a scheme as that here indicated would unduly impair the security of settlements or trusts.

28. A public map would, if practicable, be a great assistance; but it would not be a necessity, and the constant alterations it would require would probably render it impracticable, or at all events so expensive as unduly to interfere with the advantages proposed by the scheme under consideration.

29. If the register is to be conclusive evidence of the description and identity of the land, the registrar must ascertain their accuracy; but it would probably be more expedient to leave those questions to the parties.

30. I think it would be very objectionable to invest the chief registrar with any judicial authority.

31. I am of opinion that, in the first instance at all events, the registration should be voluntary only, so as to allow a free competition between it and the existing system.

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32. I think that the registration ought not at the outset to confer a warranted or parliamentary title; and that any attempt to make it do so would ensure the failure of the scheme, by involving it in enormous expense and inextricable confusion.

33. I believe that, for a satisfactory trial of the scheme, it is essential that the provisions of the registry should relate only to the title subsequent to its commencement; leaving the antecedent title to be still, as now, the subject of investigation, until by lapse of time, or otherwise, that shall become unnecessary.

MR. LEWIS (*Solicitor*).—10*th October* 1854.

Mr. Lewis.

1. I DO. I cannot see how a retrospective investigation of the title could, under any circumstances, be wholly avoided; but I think that further limitations of time for prosecuting claims, &c. might be created, which would materially shorten the periods for which titles need be adduced.

2. I am convinced that such disposition is neither rendered insecure nor impeded by a want of a registry of deeds. As to a registry of title, see my answers hereafter.

3. Quite the contrary; and especially if the registry were of deeds and not local. In fact unless it were at every market town. (I presume a registry of *deeds* is here meant.)

4. A purchaser must investigate the past title, and if a register of deeds were established he must not only examine the deeds to see their effect but the register as well, and pay the office fees in addition.

5. I think the expense would be much increased by a registry of deeds.

6. It would be very difficult to fix an average as circumstances vary so widely; but I should be inclined to estimate it generally at about one half. It very often happens, too, that the same solicitor is concerned for vendor or purchasers and then the investigation of the title is but a trifling expense to the purchaser.

7. I think a registry of *title* would be practicable; but I question its being a saving of cost, as protection must be afforded to adverse claimants by allowing them to be heard before they are barred, and without which such a registry would not be effectual.

8. Yes. If a man could, by some means to be devised, get himself registered as absolute legal owner in fee simple, fee tail, or for any other estate, a certificate of that fact might be made conclusive evidence, and prevent any previous documents of title being produced or called for.

9. All vested legal estates.

10. Yes.

11. It would differ essentially in authoritatively setting forth the result of the assurances. This would be its object, without which it would only be a registry of assurances.

12. Necessary.

13. Yes, so far as his title to convey the land to the purchaser would be concerned. See following answers.

14. They should not (in order to render such a registry of any use) operate so as to interfere at all with a grant of the land itself to a purchaser for value. But I would not make them mere personal confidences.

15. They might be protected in same manner as claims to purchase money fixed by award or inquisition under compulsory powers in Local and Personal Acts are, viz., by having the purchase money paid into court, and the claims to it adjudicated between the parties there, without mixing up the purchaser of the land.

16. Not the existing system; as settlements, in order to carry out the system of registry under consideration, could only affect the proceeds of a sale but not the land itself.

17. It is questionable whether they would be adequately protected, as parties would be generally disposed to make great sacrifices rather than be dragged into court to try a claim. I think a sale to be protected under such a system ought in all cases to take place by public auction, and due notices of it be published and a certain time prescribed previous to completion of the transfer, in order to give parties interested in the proceeds an opportunity of competing, and getting the purchase money duly invested.

18. See answers. 13, 14, 15.

19. None.

20. Yes, all those directly charging the estate.

21. Certainly, it ought to define.

22. It will be seen that I would not let those incumbrances affect a *bonâ fide* sale of the land.

23. See answers to 32, 33.

24. See answers to 32, 33.

25. Not so frequent as might be expected.

26. I do not; such power is always given by well drawn settlements.

27. I do not think cases of loss to be sustained by such suggested course would be more numerous or worse than those arising under the present systems of trust.

28. Not necessary, but it would be desirable.

29. If the right to register were challenged on this ground.

30. Not further than set forth in answers 32, 33.

31. Voluntary only, as such a procedure would be expensive.

32, 33. It should give a warranted title, otherwise it would be comparatively useless, and an increase of cost. Notice for claimants to come in ought to be provided, and if their

Mr. Lewis.

claims appeared, to some officer competent and appointed for the purpose, to be worthy of investigation, the registering of the title ought to be postponed till the question has been settled or the claim released. All this would involve the applicant for registration in some, perhaps considerable, expense; more expense than in ordinary cases would be incurred in the adducing and investigation of the title.

Having given considerable attention to the subject of registration, and seen the system pursued in Scotland, I am quite unable to see the advantages which its advocates claim for it. For one case of fraud which it might prevent, there would be 100 cases of greatly increased expense (as compared with the present system) which it would entail, unless some sweeping alterations in the existing law of real property were devised.

Wrexham, 10th October 1854. J. Lewis.

Mr. Statham.

Mr. Statham (*Solicitor*).—13*th October* 1854.

1. What the expense of sale and transfer of land "ought to be" is difficult to define; but according to the present practice of making contracts, where the purchaser is shut out from requiring what is not, apparently reasonable, I do not see how the present practice can be amended.

2. No.

3. I do not see how it would; the deeds, although registered, would have to be abstracted and the register examined—with this objection, that in many cases an agent must be employed to do it.

6. Probably two thirds.

7. It seems practicable to form a registry in the shape of an analysis of title.

8. I do not see how it would, as a purchaser's solicitor could hardly be satisfied without examining the deeds analysed.

9. The fee is very often a minor consideration; and I think all the incumbrances and contingencies ought to be stated.

10. My own feeling is that such a limitation as that suggested in the first part of this question would be very unsatisfactory, and that a purchaser's solicitor could never confidently assert that his client's title was safe.

11. By an analysis as above suggested.

12, 13, 14. In the multiplicity of interests and trusts that arise it seems very difficult to answer these questions.

15. Such a protection might in many cases be beneficial.

17. I should think they would in general.

18. It would depend on circumstances. It might be very unfair to prevent a transfer in many cases which arise when the claimant has not a shadow of right, and a bond of indemnity might satisfy a purchaser.

19. Probably. In some cases the object of a distringas would be sufficiently answered by the mere notice.

20. It is difficult to define.

21. Anything that would or ought to have the effect of putting a person on inquiry would be sufficient.

22. By official memorandum of the distringas, &c.

23. In many cases it could not be more than an affidavit.

24. No.

25. Not numerous, considering the number of trusteeships.

26. For the sake of simplifying dealings with land, I do not think it objectionable. In many cases land could not be dealt with if the trusts were disclosed, when there is also nothing morally wrong intended.

27. I do for many practical purposes.

28. I think a map might lead to confusion in the subdivision of property, especially in large towns, such as Liverpool. It would have to be on a very cumbrous scale.

29. I should say so.

31. The use of it appears to be questionable, unless it is compulsory.

32. I do not think so; it might work great wrong.

33. That appears to me to be the only course that would be satisfactorily practicable.

Liverpool, H. H. Statham.
13th October 1854.

Mr. Devey.

Mr. Devey (*Solicitor*).—14*th October* 1854.

1. I think it more expensive than it ought to be, through the needless length of deeds and the unscientific mode of preparing abstracts; but I doubt whether retrospective investigation can be dispensed with.

2. Not impeded, and, with very rare exceptions, not rendered insecure by such a want.

3. I think not; unless some plan of registration, like that suggested by Mr. Cookson, can be made practicable.

4. Mr. Cookson's plan aims at this facility by each of these ways. But I have not studied it, and cannot offer an opinion of its practicability.

5. I think to both.

6. I am unable to answer this.

Mr. Devey.

7. I think it possible. A rigid examination of Mr. Cookson's plan might furnish the answer.

8. See answer to question 4. The forms of conveyance generally used might be, and ought to be, simplified and shortened. I have recently seen, with regret, the old pernicious tautology sanctioned by eminence and talent officially engaged in the work of reform.

9. I am not aware of any objections to the statutory requirements applicable to the Middlesex register.

10. If the necessity for such retrospective inquiry be not avoided, I think a register would not save but increase expense.

11. I cannot see much difference.

12. I think it would be.

13. I think it would be.

14. I think it would be.

15. I think they might be.

16. I think they might be; by every such registration indicating the persons to whom notice of a meditated transfer should be given, as in the case of a distringas.

17. I would not subject a beneficiary to the painful embarrassment of choosing between the risk of loss and the probability of offending a fastidious trustee, perhaps a near relation, who might resent what he would consider an insulting record of suspicion. I would, as suggested in the preceding answer, make such registration supply the requisite caveat. Every registration should show whether the transferee were owner or trustee. This might be most important in case of judgment against him.

18, 19, 20. The preceding answer renders it needless to answer these questions.

21. Only the name and address, as in the case of a distringas upon stock.

22. By a fresh entry on the register.

23. Similar to that on stock.

24. See answers 16 and 17.

25. I cannot say that they are rare.

26. See answers 16 and 17.

27. I should have considerable fear unless each registration, as suggested above, showed that the registered owner was only a trustee.

28 I think not.

29. I think not, unless to better secure the sufficiency of only looking at the last registration.

30. I think the registrar should have some discretion, or judicial authority, and to what extent would require a code, from which I shrink.

31. Compulsory, if at all.

32. I think the attempt to make registration confer a warranted or parliamentary title would produce more injury than benefit.

33. I think it would be desirable that the provisions of the registry should relate only to the title subsequent to the commencement of the Registry, and that great expense and difficulty would attend the effort to carry them further.

Ely Place, F. N. Devey.
14th October 1854.

Mr. Hunt.

Mr. Hunt (*Solicitor, Nottingham*).

1. I do.

2. It is not.

3. All the bills for establishing a register which I have at present seen would in my opinion greatly impede the sale and transfer of land. I do not see that the mere registering of deeds would decrease the expense of investigating the title.

4. So far as the investigation of past title could be avoided or diminished, to that extent would the sale and transfer be facilitated; the expense of transfer alone, now that the ad valorem stamp is equalized, is not excessive.

5. If the expense could be diminished it would be a saving to the buyer. I do not think the expense of transfer is so great as on ordinary occasions to be made a consideration in determining the price of a purchase.

6. About one third.

7. I do not.

8. I do not at present understand how a register could be other than a register of title deeds.

9. If a register were established, it is difficult to see how any form of ownership could with propriety be omitted.

10. I do not think it would be essential; it appears to be a mere question of expediency, and the mode of determining the present state of the title would be difficult.

11. See answer to No. 8.

12. If all forms of ownership were not admissible upon the register, it would be necessary to make trusts of those inadmissible.

13. I think it would.

14. If unregistered, it would simplify the transfer that trusts and equities should be made personal confidences only; but at the same time this would greatly add to the difficulties of persons dealing with their own property, who, on the one hand, would have

Mr. Hunt.

to disclose their most private transactions, or, on the other, to risk the loss of their property by faithless or negligent trustees.

15. This could not be done, in my opinion, without disclosing matters which are usually desired to be kept secret.

16. I think not.

17. This method of protection would impede, in many instances factiously and unjustly, the transfer of land, and would probably lead to great litigation and delay.

18. Any proceeding which would disclose an uncertainty in the title would necessarily have the effect of impeding a transfer until the uncertainty was cleared up: the purchaser might take his transfer and deposit the purchase money.

19. A claim upon the purchase money need not prevent the transfer; but a claim to the land would require to be dealt with differently.

20. To allow all equitable interests to be protected by distringas would, I think, lead to endless delay and litigation, while to deny the protection to any would lead to fraud, dishonesty, and consequent loss.

21. I think it would be necessary to define the interest claimed.

25. Instances of breach of trust involving loss are frequent.

26.—33. These questions appear to be practical ones which require great consideration, and which my experience does not enable me satisfactorily, even to myself, to answer.

WILLIAM HUNT, Nottingham.

Mr. E. S. Bailey.

Mr. E. S. BAILEY (*Solicitor*).—22*d November* 1854.

IT is incumbent upon the advocates for a registry of assurances to prove that it is required, either—

1stly. For the prevention of frauds arising from the suppression of deeds.

Or; (and in addition to the above,)—

2dly. That a registry, properly conducted, would greatly reduce the expenses of transfer of land, both to the vendor or purchaser, or one of them.

And (or),—

3dly. That it would strengthen the title of purchasers.

As to the first. The experience of our branch of our profession must prove that neither the extent nor the magnitude of *fraud* arising from the suppression of deeds can create any necessity for a registry; which must, in any event (regarded only in this light), cause a great and unnecessary additional expense in the transfer of land.

Secondly. If the registry is, like the Middlesex and York registry, to comprise all deeds affecting land, and notice of each deed is to be notice of its contents, nothing (setting aside fraud by suppression of deeds) can be gained by such a registry; as an abstract of each deed, and an examination of its contents must continue necessary, as in the present practice; and in addition, therefore, to the present expense there would be the additional charge of the registry of each deed, and a search of the registry on each transfer.

As respects small purchases, and mortgages of small properties, and which are much more numerous and important (not only to the parties but to the county) than non-practical men have any knowledge of, the registry and search would be destruction.

If, therefore, the proposed registry is not to be conducted on the present principle, in what way is it to be conducted?

If such object is really to be carried out so as, secondly, to reduce the expenses of the transfer of land, and, thirdly, to strengthen the title of purchasers, it can never practically be accomplished except by creating a register simply confined to the name and addition of the party in whom, for the time being, the legal estate in the land is vested; and by enacting that a conveyance from such party to a purchaser shall be good against all the world; in a word, to make such a conveyance equal to a parliamentary title against all the world.

Are the landed proprietary prepared to sanction such a change?

It would appear that the Commissioners are not prepared to recommend such a sweeping measure, as, evidently, the questions put by them tend to the placing the transfer of land on the same footing as the transfer of government stock or shares, or property in any public or trading company; and this is the more evident from the protection proposed to be given to equitable interests, by the same means by which they are now protected as respects government securities,—namely, by distringas or stop.

That land should be made capable of being transferred with the least possible expense, and the greatest expedition consistent with its tenure, must be most desirable; but in attempting to assimilate the transfer of land with that of government stock, or shares in a company, it should seriously be weighed whether the analogy between the two classes of property holds, or whether there is not a wide and important distinction between them.

As respects stock and shares, they represent money, and money only; and money therefore can restore the party injured to his original position. Not so with land. In many and most important instances, the transfer of land by a party entitled to the legal estate might work the greatest and most serious ruin and mischief. The loss of their status by a family of consideration in a county, and innumerable other instances of evil not

Mr. E. S. Bailey.

necessary here to allude to, might and probably would be the consequence of such a state of the law.

Let it be considered for a moment the security which land—and land alone—may be made to give as a solid protection to a wife in the shape of dower or jointure, to younger children as respects their fortunes by way of portions, and to remainder-men in respect of their interests. At present all these when once legally created are effectually secured to the respective parties who cannot be deprived of them except by payment, possession, or release of right. It is true there may be exceptional cases, arising out of the power of sale given to the trustees of a settlement being dishonestly exercised; but such a power in all well drawn deeds can only be exercised by trustees with the consent of the party for the time being beneficially interested, if of age and competent to give such consent; and to a great extent, therefore, this exceptional power becomes limited.

Again, a mortgagor, by giving the mortgagee the legal estate, would thus, if the mortgagee were inclined to play falsely, have given to him immense, indeed uncontrolled, power.

If then it would be wrong to leave land so unprotected, would the proposed protection by a general or partial distringas or stop by a party equitably entitled be sufficient?

The very placing a distringas or stop is, at the best, a most invidious act as against the trustees; and, in family cases, would often lead to sad dissension.

It is true these are the only protections as respects government stock (and there is no protection in the case of shares in companies); but if land is to be considered as not altogether analogous to stock or shares, then these protections, such as they are, would be less adequate in the one case than in the other.

The unborn child (portions), the unborn remainder-man, and others equally helpless would have no power of protection; and yet, as respects the remainder-man more particularly, if the descent of property in families, and the preservation of families by the descent of property, is to be considered valuable or important to the community at large, surely he should not be left wholly without protection.

If, however, distringas or stop, or anything in the shape of prevention of an absolute and uncontrolled transfer by the party entitled to the legal estate should be established, from that moment an investigation of title would become necessary, and it is impossible, when once the door should so be opened, to say where the investigation is to cease. The inspection of a deed may lead to the knowledge of other equities equally entitled to protection as that to which the distringas or a stop might have applied. Are these, because no stop or distringas has been placed in respect of them, to be disregarded?

It would really appear that if a registry is to operate as simplifying the transfer of land, and reducing the expense of investigating titles, all equitable interests must be left unprotected, except so far as the *cestuique* trust might have a claim over against the trustees; and, as before stated, a parliamentary title must be given by the conveyance from the party who, on the registry, has the legal estate.

And who is to decide as to the party who is to be put on the registry as having the legal estate? and where, under such circumstances, would be the protection arising from mistake, in placing a wrong party on the registry (wrong as respects his legal title to be so placed), or from a forged deed being placed on the registry,—as, for instance, a genuine conveyance of legal estate to A registered, a forged conveyance from A to B registered, and then a sale by B to a *bonâ fide* purchaser?

Who is to suffer in such a case, the owner of the estate, or the purchaser?

As respects government stock, the Bank at present are liable to the owner in case of forgery, but where could the protection, with justice to both innocent parties, the owner and *bonâ fide* purchaser, be given?

As to the map, that would appear to be wholly impracticable.

It is submitted that registry is not wanted as a protection against fraud from the suppression of deeds.

If it is to be simply a registry of deeds, it will not afford any protection commensurate with the additional expense created by it.

If it is to be a registry of legal estate only, and to give a parliamentary title by conveyance of the legal estate,—is such a change, which may involve such serious consequences and frauds, and which must so essentially and entirely change the nature and tenure of landed property, and the security which parties now holding it possess, desirable or justifiable?

Mr. W. J. Farrer.

MR. W. J. FARRER (*Solicitor*).—*30th November* 1854.

1. THERE can be no doubt that the sale and transfer is in some degree impeded and rendered expensive by the necessity for retrospective investigation of title; but whether more so than it ought to be, is the question for consideration.

The present system gives almost absolute security to all persons having an interest in the land, but it involves much delay and expense. A system of registration of all assurances might give even more perfect security, but it would involve far more than a proportionate increase of delay and expense; while a system of registering the mere legal ownership (leaving equitable interests to be protected by the trustees or legal owners—a system to which the subsequent questions seem to point), would diminish the perfection of the

security to the parties beneficially interested (not, of course, to a purchaser), but would also, in my opinion, greatly diminish delay and expense. The question resolves itself into this:—Whether it is better for the public at large to have a system of absolute security, with an equal certainty of complication, delay, and expense; or to forego some degree of security to the beneficiaries, in order to have a system which, while it would give absolute security to the purchaser, would be simple and cheap to both parties. *Mr. W. J. Farrer.*

2. This question is double. I will answer its branches separately.

I do not think that the disposition of land is rendered insecure by want of a registry of title, or of the assurances deducing the title; but whether it is impeded or not, is a question which must depend on the nature of the registry. Any system of registering the whole title, or all the assurances deducing the title, would add greatly to the present impediments and expenses. In proof of this statement I need only instance the delay and expense caused by the registry in Ireland; which, be it remarked, affords no greater security than that given by the system in force in the non-registering English counties

A system of registering the whole of the assurances would be even worse than the Irish system.

But if a system of registering merely the legal ownership could be introduced, under which the registered owners should have the absolute power of transfer, subject to the restrictions referred to below, the disposition of land would be rendered much more cheap and simple.

3. The answer to the last questions involves this.

4. If such a system as I have last pointed out were established, it would, of course, facilitate the sale by diminishing the expense of transfer, and, in time, by avoiding the investigation of the past title; but I think that since the first step of getting the land upon the register would involve trustees (in whom shortly a great number of estates would become vested) in very heavy responsibilities, it would be necessary for their protection (as well as for other important reasons alluded to hereafter) to have the title examined in order to ascertain all existing beneficial interests at the moment of registration, just as the Irish Incumbered Estates Court investigates title before proceeding to a sale.

This would only be required once, since thereafter it might be made incumbent on the beneficiaries to give the trustees due notice of their claims.

I think a conveyance from the registered owner should be made to give an absolute title (except, of course, in cases of fraud): Though I think that, practically, *the buyer* is safe under the present system, a title such as that above suggested would be even more secure.

5. The saving would be that of the expense of investigating title, and conveyance, to the buyer; and of preparation of title to the seller. The latter would still have to bear the expenses of distributing the purchase money, but this he must do under the present or any other system.—Both would be gainers.

6. This question requires considerable examination of old bills. Under the old Stamp Act the duty on purchases of magnitude was about one per cent. I used to think that the stamp duty generally exceeded considerably the rest of the bill.

The bill included the conveyance and attendant expenses, as well as the investigation of title.

Of course, the per-centage of expense is larger on small transactions.

7. Yes; if the words registry of title can be applied to such a registry of ownership as is above mentioned.

8. Yes; because the conveyance might be nothing more than a transfer in the registrar's books, showing the date, vendors, consideration, vendees, and the particulars; the latter might be added by way of schedule. All recitals, covenants for title, &c. would be got rid of; and provisions for partial or beneficial interests would be made by separate declarations of trust, or other deeds of a like nature.

9. I think that no form of ownership should appear on the register, except the fee; i.e., I think that the registered owners should, quâ purchaser, be regarded as having the absolute fee.

10. This question is in fact answered by the answer to question 4. In the first place, it would be necessary to have an investigation of the title, in order that all existing beneficial interests might be protected. Afterwards, a retrospective investigation would be unnecessary, since the onus would lie on those acquiring beneficial interests to give notice of their claims to the registered owners.

11. If the registry disclosed the deduction or history of the title, it would not differ from a registry of assurances, except in being more incomplete. Any such system would be thoroughly mischievous.

12. I think it necessary to the simplicity and cheapness of the system, that all forms of ownership including partial and beneficial interests, should be in the nature of trusts.

Leases stand on a different ground. (See below, answer to Question 16.)

Mortgagees would probably require their securities to be registered in their own names. In that case the owner of the equity of redemption would put on the distringas.

13. I think this likewise necessary; and that the special protection should not go farther than is hereafter pointed out.

Mr. W. J. Farrer.

14. I think so. I think if the land continues affected by trusts that it will be impossible to escape the present complexity; and to this would be superadded the delay and expense of a system of registration of assurances.

15. Yes; not exactly by putting them upon the register, but by some such means as are now used in the case of stock, viz., distringas; i. e., providing that the person putting on the distringas should have notice, and the opportunity of taking proceedings to establish his claim, before the transfer of the land is made. Pending such proceedings, the registrar would suspend the transfer.

16. The system, whereby the limitations *and trusts form part* of the title could not be continued under the system proposed, but the same objects might be attained by other means; i. e., by vesting the estate in trustees, and declaring the trusts thereof, as in the case of a settlement of stock. Thus estates might still be entailed. Powers of distress and entry for interest and rent-charge should be vested in the trustees.

One of the chief difficulties that occurs to me is that of leases. This arises from the fact, that to the lessees you wish to give, not an interest arising out of the land, but the occupation of the land itself. I think, however, that the onus of finding out the existing leases might be fairly thrown on the purchaser, the power of leasing being still placed in the hands of the tenant for life, though he might not be the registered owner.

This, however, is a matter of detail, to be considered further.

17. Yes. I think that settlements, trusts, and equities would be adequately protected by the means above pointed out.

18. The stop should only extend to impede the transfer until the claimant had had notice from the registrar, and opportunity (as above mentioned) of making his claim. After claim made, it would become matter for the court to determine (in case it were established) whether it were such as ought to put a stop to the sale (*e.g.* the preservation of a particular family estate to a tenant in tail or an estate to a mortgagor), or such as would merely give an interest in the purchase money. If the latter were the case, the transfer might (subject to any direction of the court) be allowed to proceed; and in that case, the purchase money should be paid into court.

By this means equitable money interests would be protected.

19. I think so, by the means mentioned in the answer to Question 18.

20. All specific equitable interests might be allowed the protection above suggested, the court being left to deal with the claim in the manner I have mentioned.

As to the general lien created by a judgment, see note at the end.

21. I think the affidavit to ground the distringas should set forth, so far as is reasonably possible, the general ground of the claim; but no person ought to be tied down to establish strictly the claim as therein set forth.

22. The object desired might be attained in various ways—either by notice to the registrar, signed by the transferor, that he had parted with his interest to the transferee, or by a renewal of the distringas in the name of the new beneficiary; but the transferee must bear the onus of giving the new notice or putting on the new distringas.

23. I think that such an affidavit as above mentioned setting forth the name and address of the claimant, together with the short grounds of his claim, would suffice.

24. None so convenient.

25. No; very few, considering the number and facility of the transactions. Having occasion in the course of daily practice to see a great number of such transactions, I can only be surprised that the cases of misappropriation are so rare.

26. Not at all; the rather that, from the nature of the case, there must be greater publicity in the sale of land than in the sale of stock, since it is generally advertised and sold by auction. Such publicity is carefully avoided in sales of stock.

27. Judging from the parallel cases of money and stock settlements, I do not think it would.

28. An accurate map is indispensable. No mere verbal description can be sufficiently careful or intelligible.

29. Unless the registrar does this, I think there would be many frauds.

30. Certainly not. He should only be a ministerial officer; his whole time will be employed in the organization and conduct of a heavy routine business. Moreover, he will be without an open court and bar, and without appeal; hence, he will be without control.

31. It will be of no little use unless, sooner or later, it is made compulsory.

32. I think that the registration should, if possible, be universal, simultaneous, and such as to preclude the necessity of any future investigation of past title. But if expense or any other cause should render so total and sudden a change of system impossible or impolitic, the alteration might be introduced by degrees; *e.g.* advantage might be taken of every sale to get the land sold put on the register in the following manner:—On every sale there is an adverse investigation of title. Let this investigation be conducted in such a way as to be satisfactory to the registrar, and then let the land be registered. No future investigation of title will be required. Some other mode may be adopted for those who, without sale, may desire to have the benefit of the register; *e.g.* the land may be registered subject to any then existing, and unstated, claims. If this were done, the subsequent investigations would be limited to the claims subsisting at the time of registration.

33. A registration (universal and simultaneous) would involve considerable expense, in the first instance, in the way of investigation of title, in order to get the right lands registered in the right names; but this would be compensated in a few years by the increased facility and cheapness of transfer. The actually existing claims would probably be ascertained by means of the opinion of a conveyancer of eminence already acquainted with the title. One other principal difficulty would be, the accurately defining and identifying the land,—a matter requiring care on the part of the registrar, and accuracy in his maps; but still the difficulty does not seem insuperable. *Mr. J. W. Farrer.*

There are some classes of partial interests apparently not provided for in the above questions; e. g., leases (to which I have alluded) and judgments. As regards the latter, their present effect could not be maintained with the system suggested. In my opinion, the present general lien given by them is very mischievous, being far too extensive. The new Irish system, which compels the judgment creditor to point out the lands he intends to affect, seems the true one. In like manner, he might be allowed to put a distringas on particular estates pointed out in his affidavit to ground the distringas.

It will be objected, that the judgment, in many cases, will be obtained against a tenant for life whose estate is registered in the names of trustees; but I do not think there is any hardship in throwing upon the creditor the onus of finding out what is the estate of the person to whom he is giving credit, and the names in which it is registered.

To answer many of the above questions satisfactorily would require an essay on the subject of registration. I have answered them very generally, but shall be most happy to consider them more in detail if it is desired. The space allotted to each question seems to point out that the Commissioners rather desire a short statement of general views, than a detailed consideration of every branch of the subject.

66, Lincoln's Inn Fields,
30th November 1854.

WILLIAM JAMES FARRER.

MR. RAINY (*Auctioneer*).—*6th December* 1854. *Mr. Rainy.*

1. I THINK the question of expense in the transfer of land is one of minor importance as compared with the difficulties and doubts, the delays, the serious losses, and results which arise to vendors and purchasers mortgagors and mortgagees, and other persons interested, and the community at large, from the present legal system. I have never yet heard any sound reason for upholding it, or why, if it be practicable to deduce a good title to property *after* a contract to sell or to mortgage, it should not as readily be accomplished *before-hand*.

The effect of the present state of things is *unfairly* to depreciate the value of all fee simple property by obstructing and impeding transactions; whereas, if the principle acted upon in the Encumbered Estates Court in Ireland in regard to titles and their confirmations was rendered universal, (although it is not essential or requisite to establish a similar court, under the circumstances in which property is placed, in England and Wales or Scotland,) every estate would sell for at least three years more purchase, a much larger amount of capital would be invested in landed and other real property, and circulated in improvements by its becoming unfettered and capable of immediate application.

2. In my view it is impossible to obtain an efficient and prompt mode of transfer, without the auxiliary of *registration*. The difficulties and objections which have hitherto been presented to a general registry have been grounded upon chimerical notions and prejudices, and presumed self-interests. Noblemen and others, owners of estates, have been led to imagine that a general registry would expose their affairs to the world; but a registry may be constructed with ample guard and protection, and held sacred against irregular and assumptive obtrusion or impertinent curiosity, and yet be perfectly secure in its operation.

If registration be so objectionable, as it is represented to be, why has it been permitted to exist for so long a period in Scotland and Ireland, or in Middlesex or Yorkshire?

The registry in Scotland is the best, although it is by far too voluminous, and consequently delays also occur in dealings as to property in that part of the United Kingdom, but not to the same extent.

3. Certainly.

4. Under the Encumbered Estates Court in Ireland the conveyance by the Commissioners giving a parliamentary title, and such conveyance being registered, it becomes the root of such title for the future, and renders retrospective investigation from that time, (as to former deeds and documents,) unnecessary, and no future deed or document, which is *not* registered, should be held to be valid.

5 and 6. As I have stated in answer to question No. 1., the cost of the transfer is not the chief point at issue.

Many persons have insisted that the transfer of fee simple property should take place the same as that of the public funds, but I do not concur in that—not only because in my judgment it would be unwise, but it would inflict great injustice upon the legal profession, and I shall never recommend the dispensing with a due and proper intervention of conveyancers and solicitors. It would, however, be desirable if their interference was confined,

Mr. Rainy.

in dealings with estates and other property, to their strict and legitimate legal position and department. The form of remuneration is another point. As it is, at present, it is very unsatisfactory, and is constantly assumed, though perhaps unjustly, to hold out encouragement to delay, for the accumulation of costs; but there seems to be no reason why a basis of liberal remuneration should not be adjusted by way of per-centage according to the amount of the consideration money, or a specific sum agreed upon beforehand. That all vendors and purchasers, mortgagors, and the public at large would prefer this mode cannot be doubted; and where, for example, a case with almost interminable delay and vexation to all parties interested occasions, as now, an expense of 500*l.* to 1,000*l.*, I am sure that double the amount would be cheerfully accorded for the facility and certainty arrived at by an improved system, and thus the legal profession and the public would equally be gainers. Business would be placed upon a higher, more congenial, and consistent foundation, and a great increase of transactions would be the result. As it frequently happens that the transfer of a large estate is accomplished in less time than is occupied in that of a smaller one, it is difficult to define, in reference to purchase money, what per-centage or rate of expense on the amount the costs now represent. The universal complaint is not, however, so much as to the costs, but to the perpetual delays and the consequences of them. For instance, one case out of very many others which might be quoted as an illustration:—

In the month of June or beginning of July 1852, a contract was entered into for the sale of estates; the purchase money being 380,000*l.* The title had been during upwards of twenty years, investigated by several eminent conveyancers, on behalf of respective and successive mortgagees, yet it was not till early in 1854 that the title was deemed to be acceptable on the part of the purchasers. Since then other difficulties have arisen, and that sale is still (December 1854) uncompleted, and it is not improbable that considerable further delay may occur, or that at last the matter may not come under the cognizance of the Court of Chancery. Now, supposing that in June 1852 the law or practice had admitted of a certificated title being at once attainable, these estates would have sold for full 400,000*l.* instead of 380,000*l.*, and the completion might have been effected in six months after the notice to the mortgagees. Then again, supposing that all arrangements were now perfected, and the purchasers called upon at once to complete, and the money to be in the funds, the purchasers' stock would represent from 25,000*l.* to 30,000*l.* less, although the price of the estates remain to be 380,000*l.*, and in the interval between June 1852 and December 1854, the disadvantages to the vendor have been very serious, and his contemplated future views entirely suspended.

7. and 8. That a general registry, which should answer every purpose of facility and security and simplify the titles to property, could be constructed, does not admit of a doubt, and I have always regarded the objections to it as merely illusory, but it should assume a *mercantile feature*, and be altogether divested of technicality or complexity. The entries in the books of the Bank of England and all other great public companies may be said to be registers; and be the extent of business what it may, the machinery is worked from day to day smoothly and accurately, and so could that of a general registry as to property, whether the property be in England and Wales, or Ireland or Scotland; and general registers exist in France and many other countries.

The suspicions and doubts as to valid and sufficient titles are enormously magnified with us, without a cause, for it can be demonstrated that out of every 1,000 titles throughout the United Kingdom, 999 are sufficient for every legitimate purpose.

28. Upon every conveyance or mortgage deed there should be (and indeed of late years there have been) a correct map and terrier or schedule of the estate. The Ordnance and other surveys are so far completed as to furnish public maps to a considerable extent, and when perfected will, perhaps, be found, in addition to the specific and separate maps, to meet every requirement for registration, undergoing, of course, from time to time supervision and correction; and it therefore does not appear to me that a general public map would be necessary, as a preliminary to a scheme of registration.

29. Generally speaking, all modern and recent maps are accurate. Surveyors of the present day are better versed and informed in the practice of their profession, and are fully aware of the imperative obligation upon them to have the details and figures correct, but it would be competent to vendors or purchasers, mortgagees, and others interested, to have maps tested and verified by the registrar in case of dispute.

31, 32. Compulsory as regards sales and purchases, and mortgages or other securities. The system and practice should be uniform and universal throughout the United Kingdom, without distinction for England, Ireland, or Scotland; for if a new system with registration be a good, why should it not embrace the whole United Kingdom, and the action of the more enlarged amount of capital.

Before a purchase or mortgage can now be completed, it is necessary to ascertain the previous claims and incumbrances upon the estate; but it is done subsequent to a contract. In the Encumbered Estates Court in Ireland they are ascertained previously to the sale, and then claims, whatever their nature, do not affect the purchaser, nor has he to see to the application of the money he pays for the estate.

Regent Street,
December, 1854.

ALEXANDER RAINY.

Mr. J. MEADOWS WHITE (*Solicitor*).—Received 22*nd December* 1854. *Mr. J. M. White.*

1. THE sale and transfer of land are rendered more expensive than they ought to be by the necessity for a retrospective investigation of the title.

2. A registry of title would render the disposition of land more secure.

3. The sale or transfer of land would be thereby facilitated.

4. It would be facilitated by avoiding the investigation of past title, and diminishing the expenses. The buyer would be more safe and secure, assuming the register's certificate to be sole evidence of title.

5. Every prudent vendor or purchaser takes the cost of investigation of title and transfer into account, in making his calculations on the sale or purchase. The cost is in fact a part of the consideration, and the saving of this cost would secure so much additional purchase money for the parties, instead of being absorbed in agency.

6. There is no standard or ratio by which any proportion of the expense of a purchase to its cost can be calculated. The same title is required for every fragment of the largest estate; and the responsibility of the agents is the same. Hence, as a general result, conveyances of small properties are the most burthened with expenses of agency.

7. I think it is quite practicable to establish a registry of title, as distinguished from a register of deeds and assurances under which the title has been derived. Without a registry of title, a registry of deeds would greatly add to the costs of transfer, but afford no corresponding benefit.

8. A registry of title would simplify titles and forms of conveyance generally. The difficulty rests wholly in the first stage, that is, the registry of existing titles. This step once securely taken, a simple certificate from the registrar that A. was legal owner of the fee of the land would be enough, and when B. bought, this would be exchanged for a like certificate for him.

9. A registry, to be really useful, should be of the simplest kind. Hence it should be of the legal estate only. If equities and trusts be put on the register it would be merely a repetition of the present lengthy and costly character, with the cost of registry added.

10. Taking the first stage of the registry to be conclusive as to the existing title, (as suggested in par. 8,) it would be a great and needless drawback to record the history or past deduction of the title. After the registry is once established, any such history should be limited to the first record, and deduced from thence. But on the whole it would be best to consider the certificate of the registrar as absolute proof of the title to the legal estate in the fee, and thus avoid all retrospective inquiry into the title.

11. A deduction of the legal title might exist, exclusively of a register of assurances; at any rate so far as equitable interests, entails, and the like are in question.

12. There seems no necessity for interfering with other forms of ownership, whether of the nature of trusts or not. If the principle be once established of a certified title to the legal estate, other forms and trusts would range with such a system, the main object of a cheap, safe, and simple transfer of land being obtained.

13. For the like reason it seems neither necessary or desirable that the certified legal title should be clogged with equities and trusts.

14. They would rightly become personal confidences only, and the land be freed from the encumbrance of being fettered with them.

15. But they might be protected in some way analagous to a stop order on funds in the Court of Chancery, or a distringas on stock, or a caveat at Doctors Commons, and the like.

16. The existing system of settlements would undoubtedly require to be modified and adapted to a registry of title. Many of the existing limitations in settlements are rendered necessary by the complicated nature of the title to land. When this is simplified, its effect will tell on all classes of limitations and trusts of land. In what manner this should be done may perhaps be more conveniently considered, after the main object of a registry has been attained.

17. See reply to No. 15.

18. The transfer might take place, with notice to the party lodging the stop order or caveat, leaving the parties to apply by summary process to the proper jurisdiction to settle their equities, the transfer being stayed for a limited time, until some sufficient process should direct the registered owner to stay, or permit him to proceed with the transfer.

19. Facilities might be given in some cases to allow the transfer of the land to proceed, impounding the consideration for the transfer, and fixing it with the equities under notice. This might be specially provided in cases of pecuniary claims or direct charges on the land itself. A notice of equitable interests under a settlement, when supported by an order of court, should have the effect of stopping the transfer.

20. See last reply.

21. A statement of the name and address would be sufficient, otherwise the registry would greatly enhance instead of saving costs, as is too often the case now.

22. Any person acquiring the interest protected by the distringas should be required to give a fresh notice, which should operate as a discharge of the former, or it should be expressly entered as a substituted protection.

23. A judge's order on proof by affidavit, or declaration, or some similar means of verification, might answer the purpose and be annexed to the notice.

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24. The above suggestions of a notice do not specifically contemplate a distringas as the mode of protection. A simple notice duly verified, as suggested in the last answer, would be sufficient.

25. Although I have often heard of misappropriation of trust funds, I cannot say that in my own experience many have come under my notice. On the contrary, as regards stock, I have been surprised at the misappropriation being so rare, considering the opportunities which *primâ facie* would seem to offer themselves to the trustees, in whom the power of transfer rests. But this may in part be attributed to the fact of a power being for the most part requisite, and to its being required that it shall be put in force within a limited term, The formalities of execution, and the particularity observed by the bank authorities, are further safeguards which must not be lost sight of. And, as a rule, where the trustees of stock have been reduced to one or two, it is a common precaution to fill up the full number, so as to prevent fraud or collusion, or the confounding trust stock with the individual assets of the trustee.

26. There seems to be no reason why the precautions which now protect stock and money trusts might not readily be adapted to a registered transfer of land.

27. The security of settlements and trusts would not in my judgment be impaired by the proposed registry; but they might undoubtedly be simplified by thus setting the title of the land free from its present shackles.

28. I conceive a public map essential to any well-arranged registry of the title to land.

29. By analogy to the transfer of stock the registrar ought to be charged with the duty of ascertaining the accuracy of the description and identity of the land. But to ensure this, a local registry would be indispensable. A central registry would be equally indispensable to a perfect system. A union of the two seems to be at once practicable and desirable.

30. The chief registrar should have judicial powers for all the purposes of complete registry of title and transfer. These powers should extend to a judicial decision on the settlement of the title in the first instance, with power of summary appeal for dissatisfied parties, and a reservation of the rights of dormant or remote claimants for a limited period. In the subsequent processes of the registry there should be a machinery for settling all interlocutory points of boundaries, descriptions of parcels, and the like.

31. A voluntary registration would be worse than useless. But as considerable time must elapse for bringing the whole machinery of a registry of title into working order, parties might be allowed, after a given date, to register their own titles, due care being taken for the protection of such interests as may appear on investigation to be mixed up with the title. After a given period all registrations should be compulsory. All titles of a public character might at once be brought within the operation of a compulsory registry, by a provision making them equivalent to a statutory title.

32. The registry when once in force should convey a warranted title* under the operation of the Act enforcing the registry. Nothing short of an inquiry by commissioners analogous to the proceedings under the Tithe Commutation and Inclosure Acts would suffice for this purpose. But a commission of that nature would well be adapted to the purpose.

33. If the old title be left open to investigation, the utility of a registry would be wholly lost to the present generation.

JOHN MEADOWS WHITE,
10, Whitehall Place.

Mr. G. Sweet.

Mr. GEORGE SWEET, Barrister (*Conveyancer*).—Received 22*d January* 1855

1. IT is notorious that great expense and delay are occasioned by the necessity of investigating the history of the title on every sale or mortgage of land. The investigation on a sale is generally double; first, on the vendor's behalf, in order that conditions may be framed to place reasonable limits to the purchaser's objections and requisitions, and then on the purchaser's behalf.

2. I think that a registry either of title or of assurances might be established so as to diminish the delay, expense, and insecurity which now impede the dealing with land. The question of insecurity may be viewed in various aspects. It often happens that a purchaser under restrictive conditions is advised that his contract binds him to accept the title,

* If by warranted or parliamentary title it is meant that the state is to make good any mistakes in the registry, provision would have to be made for the costs of such a guarantee and indemnification. But it cannot be supposed for a moment that the country at large should bear costs and charges of which the landowners would reap the sole benefit. If such a fund is to be provided at the cost of the landowners, it would be a tax of no small amount, and the measure would be most burthensome. Owners of land, like owners of other property, should take care of it themselves. To relieve them of such a charge at the cost of the community would be inconsistent with sound legislation. These difficulties would, however, be chiefly met by the preliminary inquiry suggested in the reply to No. 32, if efficiently conducted, the fiat of the authority entrusted with the inquiry being final as to the then ownership of the legal estate, from which date the Registrar's certificate of title would operate. The cost of this inquiry, like that of the Tithe Commutation Act, might be divided between the country at large and the parties interested, the machinery being at public cost, the landowners attending and making out their title to their property, and the necessary map or terrier, at their own expense.—*J. M. White.*

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although the investigation has been so restricted that it is impossible to be sure that the estate is unincumbered or that the vendor has power to convey the fee. And though the eviction of a purchaser is rare, I know two cases of purchasers who have accepted bad titles, and are now liable to eviction. Thus considered, however, it cannot be said that titles are insecure under the present system. But the appearance of insecurity is very common, and leads to stringent conditions of sale, and consequent depreciation, claims of indemnity or compensation, disputes, and litigation. Such titles may be vendible, but can seldom be taken as a security. I have known experienced persons attribute the failure of attempts to sell estates entirely to the damping effect of special conditions by no means unusually stringent. There is a large class of titles depending upon doubtful questions of law or on matters of fact not capable of proof, which are really insecure and unmarketable upon any reasonable terms. These do not attract notice, because they are never brought into the market. I think that a register might be so established as ultimately to remove almost every cause and appearance of insecurity.

3. I think that a public register of title would greatly facilitate the sale and transfer of land. It would involve a trifling addition to the expense of settlements and appointments of new trustees; but, on the other hand, it would shorten settlements by simplifying the deduction of title and striking out the clauses which are now inserted for the security or satisfaction of purchasers and mortgagees.

4. A register of *title* is understood to mean a register which contains an authoritative and conclusive statement of the condition of the title for the time being, so far as is necessary for the purpose of alienation, but subject (if there is no official warranty) to adverse titles and claims existing when it was first placed on the register. Under such a registry the unmarketable titles now so common would gradually disappear, and, after it had been established a sufficient time, there would be no investigation of title beyond the inspection of an official certificate. Sales and mortgages could be negotiated and completed in a few hours; purchasers would be absolutely secure; conveyances would be reduced to a common printed form, and the cost of them would be measured by shillings instead of pounds.

5. I have heard it asserted that the possible cost of completing a purchase never enters into the buyer's calculation of the price, but I am satisfied that it is not so with those who are well advised or have had any experience. If a bidder knew that he could complete the purchase without delay and without expense, he would bid more. The seller would get a better price, and would also save the expense of investigating and proving his title, which is often enormous. If, on the average, buyers now make a fair allowance for contingent expenses, the only gain to that class would be the substitution of certainty for speculation, an increased supply of land in the market, and the contingent benefit to be realised when they in their turn become sellers or borrowers; the rest of the gain would go to the class of sellers for the time being.

6. The total expenses attending a sale on either side seldom come to my knowledge, but I believe that they frequently bear a large proportion to the value of the property. I remember a case where the expenses of a mortgage exceeded half the amount of the loan, although no unnecessary expenses were incurred and the charges were moderate on both sides.

I have the accounts of a purchaser's legal expenses attending the purchases of estates in different parts of the country made at various times since the year 1851, and I know that the business was conducted economically. The accounts include the conveyances, but not the stamps nor any item which would be unaffected by the adoption of a register. In the following table, the first column shows the amount of the purchase money; the second, the legal expenses:—

£	£	s.	d.
1,800	24	0	10
100	23	14	3
1,000	46	12	0
4,667	54	5	4
230	39	13	3
2,300	52	0	4
500	15	6	8
1,260	17	2	8
2,662	39	0	0
600	31	10	0
1,340	40	9	2
1,695	21	10	0
956	23	19	0
1,835	32	0	10
1,248	46	12	2
1,895	54	8	0
225	15	7	0
2,274	72	4	6
746	48	12	6
27,533	699	8	6

This table shews an average of two and a half per cent., or five times the ad valorem stamp duty, which alone is justly regarded as a heavy tax. But an average gives no notion

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of the burthen in individual cases. Thus, in the second example in the table, the purchaser s legal expenses exceeded twenty-three per cent. on the purchase money.

The absolute amount of the vendor's legal expenses would in each case much exceed that of the purchaser's, and after allowing for the spreading of the vendor's expenses over many lots, I think that they cannot be stated at a lower average than five per cent.; and if we include the mere legal expenses of the various mortgages which in the greater number of cases precede a sale, the total expenses on the vendor's side will amount to ten or twelve per cent.

7. 10, 11. I think it practicable to establish a registry of title on a plan substantially the same as that proposed by Mr. Wilson. As soon as proper maps of the district included in the register are prepared, I would declare all assurances affecting land in the district made after a certain day (except short leases at rackrent), void as against registered purchasers, &c., unless made by means of the register machinery or protected by caveat or other prescribed method; and no dealing with an estate or interest of a qualified or limited nature created after the establishment of the register (other than a mortgage or a lease), should be allowed to appear as such on the register. During the existence of particular estates and interests created before the register, it would be necessary to grant special certificates of the registration of assurances affecting them; but these would gradually disappear.

The title under the register would be comprised in a simple certificate of ownership referring to any existing mortgages and leases. The registrar's office being simply ministerial, he would register all comers without inquiry, only taking the precaution of searching for any prior entry of a conflicting title to the same property, and, on finding any such entry, placing a reference to it on the new certificate and against his book entry of the old claim. On alienation by a registered owner, his certificate would be cancelled, and a new certificate issued to the new owner. On a mortgage or lease, the mortgagor or lessor would exchange his certificate of absolute ownership for a certificate of ownership subject to the mortgage or lease, and a certificate would be granted to the mortgagee or lessee.

The first entry of a conveyance against a given property would operate as an absolute conveyance of all the estate and interest of the conveying party, and not farther. The certificate of ownership under that entry would, in terms, be a certificate of an absolute legal title to the fee simple, either unincumbered or subject to a registered mortgage or lease, or both, or to several mortgages or leases. A purchaser from such registered owner would investigate the prior title, according to the present practice, and on each successive alienation a similar investigation would be made until the lapse of time justified its omission.

But a sixty years' title under the register would not alone be satisfactory. Such a title is satisfactory only when the earlier documents import an alienable title to the fee. The register would not disclose the nature of the registered conveyances. These might be, during a period of sixty years, a succession of conveyances in fee on the appointment of new trustees, and the trustees might have no power to sell. The infirmity of their title would not appear on the register, and a purchaser would only see the last certificate. This difficulty might be met by keeping trust estates off the certificate register until the occurrence of a conveyance to a purchaser or absolute owner; the intermediate assurances being registered in full, according to Mr. Duval's plan. If that expedient were adopted, no estate would be admitted on the certificate register without a statutory declaration by the grantor and grantee that the granting party or parties collectively were not bound by any trust that could affect a purchaser.

8. Mr. Wilson's communication to the late registration commissioners is the best answer to this question.

9. I think that the fee simple, mortgages, and leases, and perhaps rentcharges in fee and perpetual easements, should be the only forms of ownership disclosed by the register. To admit all the varieties of interests that may be created by settlement, according to any plan that has come under my notice, would introduce complication and insecurity. I think that protection for every kind of interest, whether present or future, may be secured by registering in the names of trustees, with provisions for caveats and stops.

12, 13, 14. It is a question of form merely whether interests excluded from the register are to be regarded as trusts or as legal estates. As against a purchaser from a registered owner, such interests would be non-existent; as against other persons, they might subsist with their present incidents, including, until defeated by a conveyance on the register, such rights over the land itself as they now involve.

15, 16, 17. Every kind of interest, whether vested or future, might be sufficiently protected by a caveat or a stop. In ordinary cases, the interests of the objects of a settlement or will would be left to the care of trustees. The office of a caveat or a stop would be to protect a particular estate or interest against a registered beneficial owner, or to protect a settled estate intended to be inalienable by the trustees. The caveat would secure the sending of a notice or notices to a certain person or place, or to several persons or places (there might be an office for receiving such notices and transmitting them to the persons interested, the latter of course taking the risk of failure). The stop would be a bar to alienation until removed by the registrar or the Court of Chancery (according to the terms prescribed by the owner at the time of lodging the stop), on such consent and supported by such evidence as might be prescribed at the time of imposing it. Thus, the stop might be made removable only with the consent of the first son of A. who should attain the age of twenty-one years.

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18. 24. A caveat might have the effect merely of letting in the title of the persons claiming the benefit of it against a transferee on the register, notice of such title being sent to the registrar within a limited time, and it might be lodged by any person, subject to the liability to pay costs and damages, if lodged without cause. A longer time might be given to persons submitting their title to investigation by the registrar. A stop would be imposed by the registered owner for the time being, and while in force would prevent a transfer. A person entitled to transfer on the register could either lodge a caveat or impose a stop; a person not entitled on the register could only lodge a caveat. The nature of the interest to be protected would in either case be immaterial to the working of the machinery.

21. The caveat would merely state the person to whom or the place to which notice should be sent; and if lodged by a stranger, it would or would not, according to his instructions, be communicated to the registered owner. The stop would contain instructions to the registrar, and would define the person or persons entitled to remove it, and the conditions of removal.

22. The interest protected by a caveat or a stop, if alienable at the time of lodging it, would be represented by a certificate, and would be transferable on a subordinate register of caveats and stops in the same manner as estates on the principal register.

23. The caveat might be lodged without evidence, at the risk of costs and damages. The stop could only be lodged by a registered owner.

25. My impression is that cases of fraudulent misappropriation of trust moneys are not frequent, because trustees are picked men, and that the connivance of several trustees in a fraudulent misappropriation is extremely rare. Misdealing with trust funds, by making unauthorized and unsafe investments, and other breaches of trust, committed in ignorance or in the spirit of speculation without any fraudulent intention, are more common; but in such cases the fund is seldom wholly lost, and the trustees (who may be men of property) do not take flight. The only valuable opinion on this subject, however, would be that of a solicitor.

26, 27. I think that the practice of inserting powers of sale in settlements and mortgages as a matter of course proves that the proposed scheme of registration, if properly understood, would not be considered objectionable or dangerous by lawyers or landowners.

28. I think that a public map of some kind is essential to the efficient working of a register. But as the map would only be an index to the registered ownership, it would not require a high degree either of accuracy or of detail. It would be a map of boundaries only.

29. The registrar would prepare the certificates of ownership, in which the property would be described by maps. He would require, in the first instance, sufficient information to enable him to make the map on the certificate agree with the corresponding part of the official district map; and in subsequent dealings with the same property he would see that the maps agreed. But the accuracy of the map with respect to the land itself would be left to the care of the parties interested, as at present; and as the register would operate merely as a conveyance, errors in description would be followed by no worse consequences than under the present system. The universal use of moderately accurate maps would put an end to questions as to the identity of parcels. I have frequently known such a dispute on a single sale to cost the parties more money than would have paid for surveying the estate three times over.

30. For the purpose of dealing with a stop imposed for the protection of persons unborn or under disability, the registrar (or the Court of Chancery) should have judicial power, but not for any other purpose; except, perhaps, that suggested in the answer to question 18.

31. The registry should be compulsory.

32, 33. I think that the official investigation of titles is impossible. If possible, it would be unsatisfactory, and enormously expensive; for, as the object of such an investigation would be to protect all existing and possible interests, it would necessarily be more complete and searching than that of a purchaser, who merely seeks safety for himself, and official caution and pedantry would make it still more oppressive. The consequence would be, that if the alienation of unwarranted titles were allowed, no titles would be submitted for warranty; but if it were prohibited, many good titles would be rejected and made inalienable, which would not be endured. This dilemma justifies the assertion that the official investigation of titles is impossible. The Incumbered Estates Court has only dealt with large estates, under exceptional circumstances, and not, it is alleged, without occasional injustice to individuals.

GEO. SWEET.

Chancery Lane, October, 1854.

Mr. R. Jackson.

Mr. ROBERT JACKSON (*Solicitor*).—Received 23*d January* 1855.

1. THE sale and transfer of land *ought* not to be impeded or delayed, or rendered expensive, by any means which can safely be avoided. The exposition and investigation of the title on every sale or mortgage no doubt occasion the greater part of the delay and expense attending the transaction.

2. 3. 4. The disposition of land is at present impeded, (viz.) *delayed*, and rendered in some degree insecure by the difficulty of discovering, with positive certainty, the actual state of the title, and procuring evidence of it, which after all will not produce *absolute*

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certainty. But whether the sale and transfer of land could be facilitated by a public "*Register of Titles*" (assuming it to be practicable) must depend upon the nature and quality of such register, and the extent of its authority. If a perfect register of the titles to land could be contrived, enabling a purchaser by a short search to ascertain that the vendor (for the purpose of sale at least) is *perfect* owner, and can confer an *unimpeachable title* against all the world, like commissioners selling under an inclosure act, there can be no doubt, that the expenses now attending sales and transfers of land might be reduced to a small amount, for the costs attending the investigations of title would be at an end, and the conveyances or instruments of transfer would probably become more simple, shorter, and less costly.

5. The saving, if effected, would be to the vendor in dispensing with the costs of abstracts of title, and of verifying them by production of deeds and evidences, all of which (assuming its perfection) would be supplied by the *register*, showing him to be *absolute* owner, and able to confer a *perfect* title. To the purchaser, the costs of investigating title, the solicitors and counsels fees for examining, perusing, and advising on the abstracts of title, and the cost of the various searches and inquiries now necessary for securing the purchasers safety, would be saved, and the instrument of transfer as before observed would probably be shorter and cheaper than now; thus great saving would be effected to vendor and purchaser.

6. This question could only be answered after an examination of a large number of solicitors bills on sales and purchases, &c., to come at a rough average of them, and their different items; but I am much inclined to think that, exclusive of stamp duty, full two thirds of the expenses of the vendor and purchaser together arise from the necessary exposition and evidencing of title by the vendor, and the investigation of it by the purchaser.

7. I doubt very much whether it be practicable to form a perfect and effectual "*register of titles,*" as distinguished from a registry of deeds, &c. A great deal has lately been said on the subject, but I have not yet seen any thing like a *working scheme* or plan of such a register, and until a fully elaborated scheme or plan is produced in all its details and machinery, showing the exact mode of its working, and the effect which it is proposed to have on the interests and rights of all parties, including creditors, and the scheme has been printed and published, and has stood the test of the ablest professional examination and criticism, it would, I think, be rash to say, that any such a "Register of Titles" is practicable or advisable, having in view the proper and safe preservation of all men's rights and interests, and the conveniently dealing with their property.

8. If the register of titles be perfect, and the registered owner's conveyance or transfer by law confer a perfect indefeasible title, the register would of course effectually simplify title, and the form of conveyance too, for there woud be no title to examine. The purchasers would only have to look into the register to see that the vendor is "*registered owner,*" and the conveyance might probably be no longer than this: A.B. (the registered owner) in consideration of £ , conveys to C.D. (the purchaser) all that messuage, &c. [description of the property], of which said A.B. was registered as owner, on the day of , in Book A., page, &c.

9. I think none but the absolute fee simple; but I refer to my answers to subsequent questions.

10. At the beginning of a "registration of title" as to any estate, there must either be a judicial inquiry and decision upon the title, and as to who is to be the absolute registered owner, whose conveyance is to be good against all the world in respect of *previous* as well as subsequent rights and claims, or the *previous* title must continue for a long period as much the subject of investigation as it is now.

11. In nothing material that I can see, unless it were a mere historical narration of the successive ownerships, without stating the deeds of conveyance, &c., something like what we see in county histories.

12. I think it would under the proposed system, and that the simple legal ownership of the fee, with absolute power of disposal by the registered owner, could only be admitted on the register, and that all other estates and interests must be mere trust estates and interests.

13 and 14. To effect the object of gaining a perfect title by and from the registered owner, I think that no interests whatever in any other person could be permitted to bind or affect that title, or the lands, against a purchaser from the registered owner, but must only affect the registered owner himself *personally*, as a trustee, where, and to the extent in which, he has not the beneficial ownership.

15. It may be that the estates and interests of persons in existence could be protected in some sort by a distringas or stop of some kind obtained and entered on the register by the owners of such estates or interests, as suggested in some of the subsequent questions, but I do not see that there could be a sufficient protection of the rights and interests of unborn and future owners of contingent and other future estates and interests under settlements or wills. I think that permitting a transfer to be made *subject* to *any* interest would be inconvenient and inconsistent with the object which appears to be aimed at, of having a perfect registered owner whose conveyance or transfer should be good against all the world.

16. I do not think that the existing system of family and other settlements could be preserved, except as mere trusts, binding on the registered owner personally only, and not affecting his *power to transfer* or the title of the lands in the hands of the *transferee* or new *registered and absolute holder*. In fact, all estates and interests, except where the whole beneficial interest is vested in the registered owner, must, under the proposed system, become mere trust estates and interests, just as is the case with stock in the public funds, where the person in whose name it stands is not the absolute beneficial owner; and as I have understood the object which the advocates of the proposed "registry of titles" have in view is the assimilation of the transfer of land to the transfer of stock in the public funds both as to the mode and the effect of the transfer. *Mr. R. Jackson.*

17. I do not think that they could be adequately protected by any such machinery; a great many of the estates and interests in succession, created by settlement, are in favour of children and persons not in existence at the time of the settlement, and for whose protection in many cases no person (except the immediate settler during his life) has any interest or care. In numerous cases the immediate possessor as tenant for life, &c. has a direct interest or *temptation* to put an end to and destroy all future estates in other persons, and acquire the whole property to himself, which this scheme of registered titles would not unfrequently give him an opportunity of doing by collusion with the registered owner, just as is now frequently done in cases of trust stocks and funds by collusion with the trustees.

18. If distringas, caveat, or stop were adopted, it should, I think, stop the transfer absolutely until removed. A transfer, subject to any estate or interest, is inconsistent with the principle of a transfer by a registered owner giving a complete title. I think that in a great many cases there would be a Chancery suit to get a distringas on the register, and another Chancery suit to get rid of it.

19. I think that no such distinction could properly be made.

20. I do not see that any distinction could properly be made. If any one be protected they must all be protected.

21. I see no necessity for stating particulars of the interest. The distringas would be entered, I presume, by order of the Court of Chancery or some other court, or a judge, who, being satisfied that the applicant for it has *an interest*, would direct that no transfer should be made without his concurrence, to be signified by his withdrawing the distringas; the court or judge having power at any time to annul or remove the distringas.

22. I think that on a person applying for and obtaining an order for a new distringas in his name, instead of that of the former person, any deduction of title between these persons would lead to unnecessary complication and expense, to say nothing of its being inconsistent with the general object of the registration.

23. The authority, I think, should be the decision and order of a court or judge on being satisfied that the applicant has an interest by good and sufficient evidence of the fact. It is impossible to say generally what the evidence should be. It must be pertinent *to* and according to the circumstances of each particular case. A removal of the distringas (unless by consent), or the obtaining power for the registered owner to transfer notwithstanding the distringas, must also, I apprehend, be obtained in the same way by decision of a court or a judge. This affords a very fine prospect of an increase of suits and proceedings in the Court of Chancery or some other court.

24. I cannot suggest any other mode. Any indirect course, as by advertisements, &c. of intended sale and transfer by the registered owner, must necessarily be very uncertain in its operation, even as to persons in being, particularly in small properties; and as to the future interests of persons not in existence, it would be of no avail whatever in most cases.

25. I think they are numerous, though but a small proportion of them come into court or before the public. Trustees of such funds are generally relations or connexions of the family or parties interested, and a great number of such cases are "*hushed up*" or compromised silently.

26. I think it would be very objectionable, and tend to destroy the security which now exists in families, as to their settled *real estates*, for their due and regular transmission in the family, according to the limitations of the settlements, and subject to the various charges of jointures, portions for younger children, &c. from time to time subsisting. The powers of sale and exchange now inserted in settlements are generally, as far as possible, prevented from being *improperly exercised* by making the consent of tenants for life and of other persons necessary; but as the trustees on completion of a sale get possession of the purchase money, then, until again invested in land, it is, as in other cases of *personal trust funds*, at the mercy of the trustees, and misappropriations and misdealings with it frequently take place. In fact, this is the weak and unsafe part of family settlements of real estate, and derogates, in some degree, from the greater safety and security attending real estates and the settlements thereof, over money or funded property. The powers of sale inserted in mortgages are part of the contract between the immediate parties, and are of a temporary nature. The mortgagee, too, has in such cases the real ownership of, or an interest in, the estate, to the extent of his debt and its interest; and it is always in the power of the mortgagor to prevent a sale by paying off the debt, and the probability

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of any bonâ fide sale and purchase being effected without his knowledge is small indeed. Therefore, I do not think that powers of sale on mortgages can have any bearing upon the question in hand.

27. I think that the security of settlements and trusts of real estate would be unduly impaired, and that the safety which landed proprietors, of that class whose estates are generally in settlement, now feel as to the preservation of their property for themselves and their descendants and collateral relations, and the payment of the various jointures, portions, and charges according to the limitations of the family settlements, would be very seriously lessened.

28. I do not see that a public map is absolutely necessary for the contemplated system of registration, though I think (and have found) that where such a map exists it affords most valuable assistance in identifying the lands described in any deeds or in private plans drawn on such deeds. It would, no doubt, be a great advantage if in every parish there was a public map made by authority, revised and corrected from time to time—say once in seven or any other number of years—and republished, the old maps being also kept. But I think that general surveys, admeasurements, and plans of all the lands in the kingdom, upon such a scale, and so minute and particular, as would be necessary to base any scheme of registration upon them, could not be made except at such an enormous cost as puts this course quite out of the question. I believe that the surveys and maps could not be completed, in the first instance, at the lowest rate of surveyors' charges, for less than a million and a quarter of pounds sterling.

29. I think so, if the registry is to be conclusive evidence of ownership in the registered owner, otherwise there might be two or more registered owners of the same land; and also I think the judge or registrar must be satisfied of the truth of every case, and that the man who applies to become registered owner, and thereby to gain the stamp of title, and absolute authority to transfer to others, is properly in a situation to become such registered owner; otherwise there is danger of a person getting into this position without any right at all, and thereby, under the stamp and cloak of his registry, committing a great fraud on the real owner or on some trusting purchaser or mortgagee.

30. I think the registrar must have judicial powers of a most extensive nature for the purpose of inquiring into the facts of every case before a registration conferring the power of absolute sale and title.

31. It would, I think, be inconvenient to have two systems of titles, and that if a "registration of titles," or any other system of registration, as to lands, be adopted, it should be uniform throughout the kingdom, and made compulsory on all, giving due time for its accomplishment; but of course every estate must go on, and be dealt with under the present system, till there is a properly registered owner of such estate, and thus experience may show whether it be advisable to make such registration compulsory on all.

32. To make a first registration confer, at the outset, a complete title in the registered owner, as proposed in this question, it would, I apprehend, be necessary to have a perfect investigation and decision of a competent court or judge upon the state and validity of every existing title; and this, I think, could not be effected satisfactorily, or with anything like certainty or safety to the rights of parties now living, or hereafter to be born. The notion of an investigation and ascertainment, judicial or otherwise, of all the existing titles to all the landed estates in the kingdom seems perfectly preposterous.

33. I think, for the reasons in the last answer, that the provisions and effect of the registry could only establish the ownership of the first and subsequent registered owners, subject to all the titles and rights prior to the first registration; and that, therefore, an investigation as to the preceding title on all occasions of sale or mortgage, &c. must take place, as now, until by lapse of time, or otherwise, such investigation should become unnecessary.

Further Observations.

In my opinion the "Registry of Titles," as far as I can understand what is meant by it in its present undeveloped state, is quite impracticable. I think that an attempt to carry it into execution could only be made at an enormous cost, and that if it ever could be put into working order with due regard to safety, (which I do not believe,) the cost and trouble attending the dealings with landed property under its provisions would be as great or greater than under the present system. For it seems to me that the proposed "Registration of Titles," with its scheme of protection by distringas, caveats, &c., would give rise to great confusion and innumerable Chancery suits, and other legal proceedings.

In conclusion, I would observe (though at the risk of something like repetition) that landed or real estates have, during the whole history of this country and its laws, been treated, found, and considered, by all families of the class possessing any considerable property at all, as being, through the medium of settlements by deeds and wills, the most stable, safe, and secure of all property (beyond all comparison) for family purposes, and for the certainty of its transmission to descendants and collateral relations in the line prescribed by the family settlements; and that such real property is subject to far less risk than any other property through the negligence or fraud, either of trustees or of the

immediate beneficial holders, as tenants for life, &c. or otherwise. And the nobility and landed gentry of this country will do well to take care that the safety and security of their family real estates, and of the transmission of such estates to their children and descendants in due course, according to their family settlements, be not in any way lessened or lightly tampered with upon any ground whatever. *Mr. R. Jackson.*

ROBT. JACKSON.

41, Bedford Row,
12th January 1855.

Mr. WILLIAM SHARPE (*Solicitor*).—Received, 23*d January* 1855. *Mr. W. Sharpe.*

MEMORANDUM.—There are several terms and phrases used in the questions, the meaning of which is not clear to me. This must be my excuse for the uncertain or unsatisfactory way in which I may be found to have answered some of the questions.

1. The term "ought to be" in the second line of the question is either inappropriate to the subject of expense, or is intended to convey a meaning that is not obvious to me. The expense of a transfer should be in all cases as small as is consistent with safety, but if the state of the law requires a retrospective investigation of title, the expense of such investigation cannot be considered an ingredient in it which *ought* not to be incurred.

2, 3. If a complete, inexpensive, and unobjectionable system of registry could be introduced, I think it would assist and render more secure the transfer of land; but I doubt whether such could be established; and until the system with all details and accompaniments be produced, it is impossible to say whether it would be an improvement.

4, 5. The answer to these questions depends on the nature of the registry; and until the plan in detail be prepared the questions cannot be properly answered.

6. The proportion varies very much in different cases; but I think that considerably more than one half of the present expense of a sale or transfer, independent of stamps, is caused by matters connected with the investigation of the prior title.

7. I think what is here proposed is not practicable without a great change in our laws relating to land, or without very great inconvenience to all parties concerned, and injustice to many, and great expense, and great probability of confusion.

8. It is impossible to answer this without knowing the nature of the registry proposed, and all the changes that are to accompany it.

9. The term "register of title" must be explained before this question can be answered. Possibly it is intended to mean (as I believe it is often understood to mean) that nothing should be put on the register but the transmissions of the legal fee; and I cannot but think that if a register of title be established it must (in order to shorten the title in any way) be limited to the transmission of the fee. To go beyond this would occasion great confusion, or at any rate very great length in the registry, and could only be done with certainty and accuracy by giving nearly the whole of the instruments or assurances on the registry.

10. What the exact "purposes in view" are I do not understand; but I cannot suppose any plan is contemplated which would at once exhibit a history of the past title, and I see no practicable way in which an inquiry into former transactions could be avoided.

11. If I understand this question rightly, I think that such register as here inferred would differ but little, if at all, from a registry of assurances.

12. If the explanation of the system of register of titles which I have alluded to in Answer No. 9. be correct, then I suppose that it would at the same time be provided that all other forms of ownership would be of the nature of trusts. But it is obvious the inconvenience of this (for instance, in the case of leases for years,) would be great, except with a great change of our laws.

13. I think it would quite neutralize the benefits generally expected to be derived from a register if interests and trusts not specially protected on the register be allowed to bind the title of the registered owner.

14. In case the register of titles above assumed to be intended (Answer No. 9.) be established, I think all future equities and trusts must become personal confidences; or perhaps could be protected to some extent (but not to a full extent) by something in the nature of a distringas or caveat.

15. I think some description of trusts and equities, but not all, might be protected to some extent in the manner pointed out in answer to Question 14.; but the expense and inconvenience would probably be greater than would be counterbalanced by any advantage to be obtained by the register. Whether this would be the case, is a question only to be answered after long experience of the working of such a system, and by long and ample inquiry.

16. I think the existing system of settlement could not be continued consistently with the principle of a simple register of title. I do not understand what is meant by the expression "the above-mentioned objects proposed in the registry."

17. The term "adequately" has no definite meaning. It is certain such settlements would not be so effectually protected as at present, and any diminution of protection to them would be injurious; besides which, the expense and inconvenience occasioned by numerous caveats, if it became the practice to lodge them in every case practicable, would undoubtedly be very great.

Mr. W. Sharpe.

18. If such registry of titles as above explained be introduced, I think the distringas, &c., while uncancelled, must be made altogether to prevent a transfer, except after ample notice to the party putting it on.

19, 20. I do not see how any such distinction as here alluded to could without injusce be made. No line could be laid down.

23. I think no authority or evidence should be required to entitle a person to put on a distringas or caveat, beyond a simple affidavit of interest, as now used for that purpose in Chancery.

24. None that might not entail still greater inconveniences.

25. I have no doubt the instances are numerous.

26. I think it would be objectionable; but until the system, with all its detailed accompaniments, be proposed, the question cannot be answered with positiveness.

27. I think the present system of settlements and trusts must be much altered if any system of registry be introduced; and they would be much impaired by the system of registry proposed in this question. What is intended by the word "unduly" I do not quite understand. It hardly seems appropriate.

28. It might be advantageous to have a map in connexion with the registry; but until such map can be made (which appears to be scarcely possible) absolutely correct, and on a scale sufficiently large to allow the exact ascertainment by it of the smallest division of property that exists or can occur, it would be improper, if not impossible, tc couple the registry compulsorily with reference to such map.

29. I think it would be most inconvenient were the law to require that the registrar should ascertain the accuracy of the description or the identity. It would often be impossible for him to do so; or the expense might be very great.

30. I see nc reason for giving the registrar judicial authority, and serious objections to it; but whether or no it would be necessary, or how far, must depend on the system of registry introduced, and all its accompaniments.

31. To make the registry of any great use it must be made compulsory at some future period; though I think not in the first instance. But unless it is compulsory, it will be more an inconvenience than a benefit, except as preparing the way towards a compulsory remedy.

32. I think it impossible that the registration could with justice, or without great inconvenience, be made to confer, either at the outset or at any time, a warranted title.

33. I think the antecedent title must always, so far as circumstances and the legal rules of limitation may require, be the subject of investigation.

WM. SHARPE,
41, Bedford Row.

20th January 1855.

Mr. B.J. L. Frere.

MR. BARTLE J. L. FRERE (*Solicitor*).—Received 29th *January* 1855.

1. I DO not consider that the transfer of land is impeded so much by the mere investigation as it is by the necessity of procuring the concurrence of every one having any interest in land before you can turn it into money, and the obligation which lies on the purchaser to see that the money is duly applied. It is also not so much the legal expense of such investigation which is an obstruction to transfer of land as the uncertainty and delay, and consequent risk of loss, which is occasioned by the multitude and complication of interests to be consulted. It would I think be desirable if a means could be devised by which the conversion of land into money could be effected at once, with the concurrence only of the person having possession and enjoyment of the land, providing a safe independent place of deposit for the money for division among the parties having pecuniary claims on it.

2. After having seen a good deal of such matters, I have never known any one single instance in my own practice of insecurity attributable to the want of a registry. I have known instances of insecurity arising from defective searches and omissions to register where a registry exists, and also many cases where a proper examination of the registry has been rendered impossible by the length and expense of it. Many other inconveniences and risks arising from such registers as at present exist might be mentioned. I think a registry unaccompanied by some effectual simplification of titles would prove a great burden and hindrance.

3, 4, and 5. It would be greatly impeded, and the expense increased to both seller and buyer.

6. No average could be given which would afford any criterion without a very extensive examination of bills of law charges. It is not so much the investigation or ascertaining the necessary parties, as the procuring the actual concurrence of parties absent, under disability, or impracticable, the constituting legal representations, &c., which causes the difficulty. These matters form a considerable part of the business of transferring land. The Stamp Duty is the most considerable item in the expense; the identification of the land and the getting in charges and incumbrances may be two thirds of the remainder, and one third the deducing the legal title.

7. I am not quite clear what is meant by a registry of title. If it means a description of the title, or a statement of inferences from the documents which is to be of equal

authority with or supersede the documents, such a contrivance appears to me quite out of the question. *Mr. B. J. L. Frere.*

8. I think not. A registry would be an excellent assistance, by preventing loss or suppression of documents, &c., if titles were first simplified, but it cannot of itself render simple that which is complicated.

9. I should consider that no interest in land could be safely or properly excluded from the register. A purchaser should not be bound to take notice of any but the legal ownership, further than to see that the amount of other claims be covered by the price.

10. I do not see how retrospect can be avoided.

11. If such a registry were anything but a registry of assurances, it must be an abstract or description of the assurances, and very liable to error.

13. It is in my opinion indispensable to any effectual relief of titles that a purchaser should have nothing to do with equities, trusts, &c., except to know the amount of them, so as to regulate the price.

14. They should not become personal confidences. They might be transferred from the land to the money, which should be placed on deposit and distributed by authority.

15. If any good is to be done, trusts and equities should in no case fetter the transfer of land, except on the one question only of price. If the purchase money is not sufficient to cover the incumbrances, the concurrence of persons having charges, or judicial decision after notice to them, would be requisite.

16. I do not understand what is meant by a simple registry of title. If you register trusts, &c., and make them part of your title, your register will be by no means simple. If you do not register trusts, &c., and thus keep them off the title, you must destroy the present system of settlements.

17. I should think they might.

18. I think the transfer might be permitted under proper authority, and with due notice.

19. I should distinguish between those which concern the management and use of the land, and those which do not.

20. All interests might be protected so as to ensure notice, &c. if the estate be insolvent, or amount of the transaction less than the incumbrances.

21, 22, 23, and 24. These all relate to matters of detail in giving effect to some scheme with the particulars of which I have no acquaintance, and I should require to have the whole plan of it before me before I could with any utility make suggestions on these points

25. Instances of fraudulent misappropriation of trust funds, where ordinary caution is exercised by the cestuique trust, are rare. Trust stocks are kept distinct, and generally very much under the control of the parties interested, and usually in several names, so that a great deal of premeditation and design would be required, and even then in most cases detection would speedily follow. Where trust funds are misapplied, it arises more commonly from the easiness, mistakes, and inattention of trustees, from the misconduct of men of business, and persons interested in the funds, than from fraud on the part of trustees themselves. Trustees are more often the victims than perpetrators of fraud.

26. A system of trustees would be inconvenient, and improperly fetter the owner.

27. To some extent it will be, no doubt; but I think not very seriously. The principal risk to be apprehended is, a fraudulent sale by an owner to get rid of incumbrances at less than their amount; but I do not see why this may not be checked.

28. I am not prepared to say. Maps are most useful in the identification of land, but they are very expensive, and very liable to alteration by addition, altering tints, &c. They require extreme accuracy, and very important errors in them easily escape detection. They are a useful assistance, and perhaps with the tithe maps and Ordnance survey a good deal might be done without a more uniform general map.

29. I should think not.

30. Some one should be invested with judicial authority to decide on the value of land and the propriety of selling where these points are disputed, and on the interests of parties.

31. Unless compulsory it will not be done at all.

32. I do not think this practicable; the expense would be enormous, and the exposure most objectionable.

33. Registration, if adopted, must be prospective only. The title must always be to some extent a matter of investigation.

34. I do. It is by some such machinery as the Incumbered Estates Court that the transfer of land only can be facilitated. The existence of a complete survey will, of course, enable you to ascertain by experiment whether you can beneficially convey and register by reference to it, and it would soon be found whether or not the public valuation is a sufficient guide to assist in the prevention of fraudulent sales. The Irish registry is a great example of the expense and inconvenience attending the same in its existing form, though it might facilitate an attempt to register titles in some other form.

35. I have not.

36. I have no particular information on these subjects.

Mr. B. J. L. Frere.

I have answered the questions of the Commissioners as well as I can in the time which I have been able to give to the consideration of them; they appear to have reference to some scheme for registration, more or less matured, of which I have no knowledge. It would be more satisfactory and useful if the particulars of this were communicated for comment, for there is great risk of misunderstanding in this abstract form of inquiry.

BARTLE J. L. FRERE.

Lincoln's Inn, January 16, 1855.

Messrs. Nicholl and Smyth.

Messrs. NICHOLL and SMYTH (*Solicitors*).—Received 29*th January* 1855.

1. IT is certainly impeded, and rendered very expensive, by the necessity here mentioned.

2. So far as our own experience in practice is concerned, we do not consider that the want of a registry of the title causes any *particular* impediment or insecurity.

3. It seems not improbable, if the register was guarded by efficient regulations.

4. The registry would, in our opinion, be of little use unless it enabled persons to avoid the investigation of past title, and simplified conveyances by saving the necessity of long recitals and covenants for title.

5. According to the foregoing answer, there ought to be a saving of expense to both seller and buyer.

6. From two thirds to four fifths, excluding the cost of the stamps.

7. Practicable, probably, but certainly very difficult. The difficulty would arise from considerations as to the title in equity.

8. As it seems to us, the real difficulties of title to land arise from the powers afforded by the law of tying up property by entails, &c., and charging it by mortgages, &c. &c. Such charges might probably be effected more simply on some tabular form of registry.

9. We do not think much good would be obtained by merely registering the fee, or, in other words, the *legal* title. Unless a purchaser could dispense with inquiry into the equitable title, with its incidents, there would, as it seems to us, be little advantage gained.

10. The retrospective inquiry could scarcely be avoided. It could only be simplified by being exhibited in some easily comprehended form on the register.

11. It would differ in not giving mere copies of the different deeds, but some arrangement of them, in respect of the lands affected by each.

12. We do not think that much good would be effected by this, unless a *purchaser* was at the same time protected from inquiring into trusts, which would be a clear advantage to *him*.

13. It *would* be *necessary*, we imagine, as part of any such system. The result would be, that contrivances would be adopted by which all charges and trusts should appear on the registry.

14. This seems equally necessary. It would remain as an important question for the landowner, whether this would not produce a serious diminution of his existing powers of dealing with the estate, and so diminish its value.

15. We should think so, by means of some sort of caveat or distringas. The question would, however, arise, whether this would not produce, in another form, all the difficulties and expense which the registry would be supposed to remove.

16. Scarcely so, if by a *simple* register is meant a register of the legal ownership in fee, and protection from further inquiry. See answer to last question.

17. This might be so; but then the question remains, whether this would not re-introduce all the present expense and difficulties.

18. This must depend upon the nature of the charge in respect of which the caveat, &c. was imposed. If a mere money charge, in the shape of portions for children, a mortgage, &c., there seems no reason why the transfer should not take place. If it was in respect of a claim to the land itself, the transfer could not be allowed without injustice. It might lead to fictitious proceedings for acquiring a valid, in lieu of a disputed, title to a particular estate.

19. Yes; such a distinction as is pointed at by the foregoing answer.

20. A distinction could probably be made, though we are not at present prepared to state the particular interests to be excluded.

21. We think it should state the particular interest in every case.

22. By some short memorandum of transfer entered on the register, similar to the register of a transfer of railway shares.

23. To allow a distringas to be put on without *some* authority or evidence might lead to very serious difficulties. An affidavit, at least, should be required, such as would be sufficient for an ex-parte injunction, and penalties should be imposed for false swearing, &c.

24. A statement of the equitable interest placed upon the register would, perhaps, be preferable to a distringas.

25. By no means, so far as our experience has shown.

26. The chief objection arises, we imagine, from the far higher value set upon the possession of a particular piece of *land* or *estate*, and the impossibility of giving compensation by any other substitute. In the case of a fraudulent misappropriation of stock or money the beneficiaries may recover an equal amount of money or stock, and would thus be completely compensated; but the loss of a family estate, or some particular part of it, could not be made good.

27. All we can say is, that the present system appears to have resulted from the conviction (enforced by the courts of equity) that the security of an absolute charge on land

Messrs. Nicholl and Smyth.

was much better than a mere charge on the conscience of the trustee. This has probably been pressed beyond its proper limits.

28. It *would* be a great advantage, if it should be found practicable, to register minute subdivisions of property on such a map, and if the expense of the map and of the registering were not to be objections.

29. It seems impossible that he could do so without a large staff of assistant surveyors and others, all which would increase the expense.

30. We are not prepared to answer this question at present. The cases in which he might so decide do not occur to us.

31. Compulsory, if at all.

32, 33. Registration should confer a warranted title. But to require the immediate registry of all existing titles would probably produce an amount of expense and litigation which would be very injurious. We can see no other course than to make the registry of existing titles optional, and of future title compulsory.

NICHOLL and SMYTH,
18, Carey Street.

December 26, 1854.

Mr. R. Lambert.

Mr. RICHARD LAMBERT (*Solicitor*).—Received 29*th January* 1855.

1. I DO.

2, 3. I think that the disposition of land would be facilitated, and its title rendered more secure, by a well-planned system of registry; and that for the want of it a certain degree of insecurity must continue to exist, so long as the practice prevails of marshalling the title deeds, and exhibiting them only partially, to suit the circumstances of the title.

4. I think so, in all these ways, as soon as the root of the title had been established by time or some other satisfactory means,—an Act of the Legislature, for instance, establishing the title,—but with adequate protection to all equitable interests.

5. The root of the title once established, I think a public register would be a means of great saving of expense to both parties.

6. Speaking from my own experience, which has been rather extensive, I should say that of the expenses attending a purchase of land, without including stamps, two thirds arise from the investigation of the title.

7. I think it is practicable, but it would demand great skill, accuracy, and labour, to which few officers in a public establishment would be found adequate.

8. I think it would, for the very obvious reason that the register would disclose the whole title to the land, and be conclusive as to it. There could be no interpolations.

9. All forms of ownership which a court of equity would establish as charges on the land. But this is a large and very difficult question, requiring very ample discussion and consideration to determine upon.

10. If the object were an *immediate* and *complete* benefit from a system of registry, then it would be necessary in some way to establish on the registry, ab initio, a good marketable title, otherwise the full benefit can only be obtained by such a length of time, with the aid of the registry, as would of itself constitute a title.

11. I think a registry might be so framed as to dispense with the supply of abstracts of title.

12. I think it might, with the aid of the system of distringas as a protection to equitable interests.

13. Yes; but by way of further protection the registered owner might be required to verify, by statutory declaration, the state of his title when entered on the registry.

14. Yes, as between incumbrancers, but not, I think, as between them and an original owner of an equity of redemption, cognizant of such equities and trusts.

15. I think not (consistently with the other objects above mentioned).

16. I fear not.

17. It appears so, to my mind. I can see nothing by way of distinction to disturb the analogy, in its results, between land and stock, if a distringas operates as an adequate security against a fraudulent transfer of stock, why it should not also in respect to land.

18. I think it should operate as a complete bar to a transfer until disposed of by a summary order, which might open the lock.

19. I think there are cases susceptible of such distinction, and that they should be left to the determination of a competent tribunal in a summary manner.

20. The last answer bears upon this question, and I am not prepared to answer it more fully.

21. I think it ought to accurately define the party's interest.

22. The register itself would form his security, provided the devolution of his interest under the distringas were entered upon it as it ought to be.

23. Production of the party's title verified by a statutory declaration, and notice of the claim to the registered owner.

24. No.

25. No; considering the mass of cases of trust, and the age we live in, and the temptations incident to its vanities and luxuries.

26. No.

27. I think not.

28. I do not regard it as so essentially necessary as has been thought by some. It might, I think, be safely left to owners to take care of the accuracy of the descriptions on their deeds.

29. I think not.

Mr. R. Lambert.

30. As far as regards the interpretation of the Act, to constitute the registry, and the rules prescribed under it; but I doubt if its authority should extend further.

31. Compulsory.

32. If practicable, a warranted title. With a registry office might, I think, be beneficially combined a Government assurance office, by way of guarantee of title, for a premium to be paid by the party.

33. It can hardly be said that it would be sufficient. It would be a modified good, which length of time would perfect.

RICHARD LAMBERT.

34, Bedford Row,
22d December 1854.

Mr. J. E. Walters.

Mr. J. E. WALTERS (*Solicitor*).—*8th February* 1855.

INSTEAD of answering the questions propounded by the Registration Commissioners categorically, I trust that it will not be deemed disrespectful in me if I simply state my views upon the two following points, namely:

1. Whether it is desirable or practicable to establish a registration of titles.
2. Whether the legal title only should appear upon the register.

The first question admits of two considerations. 1st, whether the registration should be compulsory, and therefore universal; or, 2dly, whether it should be voluntary. A *compulsory* registration of titles is open to the following, among other, objections:—

It would involve the necessity of having every title to every acre of land in the country thoroughly investigated by a competent judicial tribunal.

This would be attended with much more trouble and expense, and occupy a much longer time, than the tithe commutation.

It would be very distasteful to landowners, who would be very reluctant to disclose their titles.

It would occasion the bringing forward of many stale and ill-grounded claims, and give rise to litigation.

It would, when completed, be of no practical benefit to any, except those who contemplated selling their estates.

But, on the other hand, a *voluntary* registration of titles might be beneficial. Suppose, for instance, that a person wanted to sell a large estate in several lots. It might be desirable to have his title judicially investigated and recorded. As this would save trouble and expense to the purchasers, they would probably give more for the land in consequence, or the vendor might indemnify himself against the expenses incurred by stipulating that they shall be paid in certain proportions by the purchasers.

One great advantage would be, that each purchaser would be able to show a perfect title, without being obliged to have recourse to title deeds in the hands of a third person.

I have assumed in the above remarks that the effect of the registration would be to give a parliamentary title. The title deeds would of course be given up, and in many instances no means would remain of establishing an adverse title. Still, as questions might arise out of wills, proofs of pedigree, or perhaps under deeds in the custody of third parties, some indemnity should be provided. The risk would be remote, and such, I imagine, as might be thrown upon the revenue, or the surplus funds in the Court of Chancery.

Upon the second point, viz., whether the legal title only should appear upon the register of titles, I am of opinion that it would be found, in practice, quite impossible to exclude the equitable title. The transfer of land can never, I think, be assimilated to that of Government securities. The two things are distinct in their nature. Government securities exist only on paper. If a man wants to buy Stock, he sends his broker into the market, and whether he buys funds which were A.'s or B.'s it is quite immaterial to him; in fact he knows nothing, and can know nothing, of the parties from whom he purchases, or how they acquired the stock they sell. Not so the purchaser of land. He only buys the particular piece of land or estate which he wants. He knows who the vendor is, and must satisfy himself how he acquired the property. Now, presuming that in the course of his inquiries, or before he concluded the purchase, he has notice of any claims upon the estate, it would be unjust to deprive the parties interested in such claims of their rights merely because the rights did not appear upon the register. Any attempt to exclude the application of the doctrine of notice would, I think, prove abortive, unless we took away from our Courts of Law as well as Equity all jurisdiction over cases of fraud. The judges would, notwithstanding any law to the contrary, in the course of time contrive some means of neutralizing any enactment which went to exclude the doctrine of notice; just as our Courts of old contrived to prevent the Statute of Uses having the effect intended by the legislature.

The question, what is or what is not notice, is a very wide one, and may be safely narrowed; but to abolish the doctrine of notice altogether would, I think, be contrary to every principle of justice and equity.

J. E. WALTERS.

Lincoln's Inn, 22d December 1854.

Mr. ALFRED BELL (*Solicitor*).—*8th February* 1855. *Mr. A. Bell.*

1. After much consideration, and according to the experience acquired during an extensive practice of many years, I cannot say that I think that the sale or transfer of land is impeded, or rendered more expensive than it ought to be, by the necessity which now exists for the retrospective investigation of the title on the occasion of each successive transfer. The present system is secure for all parties interested; and while a registration of all assurances would be an evil, by multiplying expense and causing delay, a registration of the legal title only would, I think, be unjust towards beneficiaries, who form a large portion of the public. Such being my opinion, I beg that my answers to the succeeding questions (which answers I am desirous of giving, as the questions are put to me,) may be taken merely as they are intended, viz., not as approving of any registration at all, but as bearing on the comparative merits of two systems of registration which the questions seem intended to point to.

2. I do not think so by any means.

3. Having regard to my opinion as expressed in my reply to the first question, my reply to this question is, that if the legal title only be upon the registry, and the registered owner or owners be considered in all cases as having the absolute title to the fee, the mere mechanical process of transfer of the land would be facilitated, but to the injury of another portion of the public (see my Answer to No. 1.); but I do not think the *sale* of land would be thereby facilitated, as I think parties would not buy land at all more readily than under the present system.

4. In no other way and to no further extent than I have mentioned in my answer to the last question.

5. To the purchaser only, necessarily. The seller's expenses may be either increased or diminished, according to the circumstances of the case, as the seller's position must in very numerous instances be one of grave responsibility, involving legal advice, investigation, and expenses.

6. I cannot speak with certainty. With respect to small purchases, the practice so usefully introduced of having special conditions may be made, without injury to any party, to cause expense to fall very lightly. For instance, in a sale I lately effected there were eleven lots, the lowest of which was valued by the land valuer for my clients, the vendors, (being trustees for sale, with the consent of the tenant for life,) at 10*l.*, and the highest at 290*l.* In the conditions of sale the following condition was inserted: "That "no purchaser whose entire purchase money, whether for one lot or for several lots, "shall not amount to 300*l.*, shall be entitled to receive any further abstract of title than "a printed copy of the said * * * * Estate Act; but every "such purchaser, or his solicitor, may, at any time after the expiration of twenty-one "days from the day of sale, at his own expense, inspect a copy of the abstract of the "earlier title to the lot or lots purchased by him at the office of the said solicitors." The effect of this condition was that the expenses were trifling, and the condition did not in the slightest degree prejudice the sale. By a careful inspection of titles before selling, and by a prudent use of special conditions, and enabling trustees safely to make use of them, I think the expenses of title may be made to fall comparatively light in all cases, and may be made trifling in the case of small sales.

7. I think that if a register be not a register of the various deeds and assurances it can only be a register of the legal title. Any register of an intermediate character would, I think, be more injurious to the public than any other register.

8. Yes; in simplifying the legal title and the forms of conveyance, because the mere conveyance of the land by the registered owners might be very short; but of course there would frequently have to be separate deeds with reference to beneficial interests.

9. Adverting to the opinion that I have before expressed against any registration at all, my answer to this question is, that no form of ownership or property other than the fee should properly be put upon the register, if there is to be one.

10. Assuming the register of the legal title only to have been established, the history or past deduction of title must, I think, if the registration is to answer any end proposed, be avoided; but then, for the sake of obtaining a register, all beneficial parties would be placed in difficulty.

11. If the register should disclose the deduction and history of the title it would differ from a registry of assurances only in being of course far less to be depended upon.

12. Yes, I think so; and that would be a hardship to beneficiaries.

13. Yes, I think it would be necessary, but not desirable; but it appears to me that there is difficulty in specially protecting equitable interests or trusts on the register.

14. Yes, I think it would become necessary, but not desirable; and it seems very hard that these beneficiaries should, for the sake of establishing a register of the legal title, be placed in such a situation, being *practically* nothing less than to substitute one species of property for another.

15. I do not see how, consistently with the system of a register of the legal title, they can be protected in the register; and if, as the alternative, the beneficiary is to be obliged to be on the look-out, taking professional advice, or instituting proceedings to prevent or delay the sale, I think he will have cause just cause to complain.

Mr. A. Bell.

16. It appears to me that they could not be so continued; estates would come to be vested in trustees, who would be the registered owners, and they must declare the trusts; but the beneficial parties would have no protection but their own watchfulness. A settlement of land would thus come not to differ practically from a settlement of a sum of stock, which would be felt by many to be an evil. Many prefer an interest in land, because, to use a not-uncommon expression, "while they are sleeping land cannot run away," and they cannot lose their property in it, except generally by their own personal act.

17. They would be protected in a sense if the means pointed out in this question were actually taken, but not adequately protected.

18. Not necessarily; but before the sale be allowed to proceed any part of the purchase money which might belong to the beneficial party should be secured to his reasonable satisfaction, to be paid to him without passing into the absolute control of the registered owners of land. A purchaser under the present system surveys the title, and can calculate with reasonable certainty when his purchase is likely to be completed; but under a system of registration of the legal title a purchase might be suspended indefinitely by causes necessarily unforeseen.

19. Yes.

20. I think the right should attach to all equitable interests, &c.

21. The steps for procuring a distringas should show a primâ facie ground of interest, to be amplified at the pleasure of the claimant in the consequent future proceedings.

22. The persons acquiring such interest, would, I should say, give notice simultaneously with acquiring it.

23. A simple declaration of primâ facie grounds of claim.

24. I am unable to do so, under the system of a register of the legal title.

25. By no means; but that, in my opinion, forms no just reason whatever for obliging a person entitled to a beneficial interest in land either to rely on a trustee, or to take proceedings, or to be kept always previously in a state of watchfulness, and necessarily employing a legal adviser.

26. The powers of sale in mortgages do not appear to me to bear upon the subject; they are part of the security a man consents to give in order to induce a party to lend him money. Even such powers of sale, however, are often guarded by the requirement of notice, and if not so guarded they come into operation only by the negligence of the borrower of money. Nor do powers of sale in settlements appear to me to bear upon the subject, because they are generally guarded by the requirement of the previous consent in writing of the tenant for life; and if the tenant for life be dead, powers of sale are seldom contained in settlements during the minority of a tenant in tail, and even if so contained they are generally guarded by the requirement of the consent of guardians of the infant tenant in tail. As I have before ventured to state, I think the fee must, in any system of registration, be absolutely vested in the registered owner; but I think it would be very objectionable, and indeed unjust, to strip a beneficiary of the protection the law now throws around him, and leave him the naked liberty of protecting himself in a prescribed manner. An evil would thus be created, in order to obtain what, to say the least, would be a questionable good.

27. I think such security would be unduly impaired, by such ceasing to bind the title, and follow the land, as at present.

28. Yes, I decidedly think so, and a most accurate map.

29. Yes, I decidedly think so.

30. In my opinion, decidedly not. I think the public would find great cause of complaint were such Chief Registrar to be invested with judicial authority.

31. I do not think there ought to be a compulsory registration. I think a voluntary registration would be useless.

32. If there is to be a registration, it should confer a warranted title in the outset. No labour should be spared, prior to the establishment of any register, to ascertain all rights, that there may be a proper and business-like starting point from the very first. For this purpose, titles would have to be investigated. Any attempt short of this could not fail, I think, to give great dissatisfaction.

33. I think it would not be sufficient (see my answer to last question).

59, Lincoln's Inn Fields,
7th February 1855.

ALFRED BELL.

Mr. R. C. Bowen.

MR. ROBERT C. BOWEN (Barrister, Dublin).—*10th January* 1855.

GENERAL OBSERVATIONS.

THE true object of registration appears to me to be, to give a purchaser sufficient notice of all acts and incumbrances by which his purchase might be affected or his possession disturbed; to point out the obstacles in his way, not to remove them. Any attempt to "simplify" titles or to confer "warranted" or parliamentary titles should be made, if at all, not by a registry act, but by some general measure changing the whole law of real property.

Mr. R. C. Bowen.

Titles can only be "simplified," either,—

1st. By compelling the purchaser to take the property as it stands, and prohibiting all inquiry into the past title, thus exposing him to the claims of persons who have pre-existing rights or interests; or,

2d. By conferring upon each purchaser an indefeasible title, and thus defeating those pre-existing interests; or,

3d. By simply enacting that land shall no longer be subject to settlements, trusts, equities, charges, or incumbrances, but shall pass from hand to hand with about the same facility as a bill of exchange.

Every proposal of this kind is open to the objection that it interferes with the right of ownership, and thereby depreciates *pro tanto* the marketable value. According as you restrict the owner's right to settle, mortgage, or incumber his property, you impair its worth as a security for investment, whether by way of purchase or loan. To save the expense of investigating the title, an expense which falls upon the vendor, you depreciate to a much greater amount the property of that vendor. You reduce it to a level with a personal chattel whose value is no more than commensurate with the personal enjoyment of it by its possessor for the time.

The transfer of property cannot in my mind be facilitated in the mode contemplated, save at a price far greater than the value of the supposed advantage. I am sure that registry cannot be made subservient to such a purpose with any beneficial result.

Registration, if confined to its legitimate object, should possess two essential features,—simplicity and accuracy. Any system that is cumbrous in its machinery must lead to both confusion and expense.

The Irish system of registering memorials of deeds possesses both the features I have alluded to. It apprises the purchaser of the existence of each act by which his title might be disturbed, putting him on inquiry, and enabling him to call at once for the production of the instrument described in the memorial, and for such explanations, evidence, concurrence of parties, releases of claims, or other acts requisite to the removal of the obstacle disclosed by the registry; while the arrangement of the books in the registry office affords the utmost facility of search. This system affords, so far as it goes, very complete protection to purchasers. It may admit of improvement in its details and some extension in its operation, but I have never heard any complaint of its principle or general working amongst professional men. I have seen, from the pens of English writers, occasional expressions of condemnation of this system, and of what is called the "mischievous" system of registering memorials of deeds. Notwithstanding, I think it works well in practice, and affords all the protection that registry *ought* to afford to a purchaser.

No general complaint existed, nor any general demand for a change, when Sir John Romilly conferred upon Ireland the boon of a new act of registry (13 & 14 Vict. c. 72.)

This act has never been brought into operation, and it will, in my opinion, be a misfortune if it is ever permitted to take effect. Its machinery is cumbrous and unwieldy, and its language unintelligible. I have great doubt if it could ever be made to work satisfactorily.

I may add, as proof of the general estimation in which the Irish registry is held, that it is every day's practice in Ireland, as a matter of convenience, not only to give a much more full abstract of a deed in the memorial than is required by the statutes, but also to register memorials of certain deeds, such as deeds disposing of money charged upon lands, which do not fall within the purview of the statutes at all.

The system of registration by depositing a memorial in the office is, I think, preferable to either depositing the deed itself or having it copied in extenso into books; for,

1st. It is less expensive and more convenient;

2d. It affords the purchaser sufficient notice of the instrument, without disclosing private and family transactions to the public generally;

3d. It leaves a man the custody and the *use* of his own title deeds, which are his own property.

The provision in Sir John Romilly's act for the deposit of original documents imposes upon parties the expense of duplicates; an unnecessary and oppressive addition to the cost of conveyances; and, moreover, it exposes, I think unnecessarily, the private affairs of parties to meddling curiosity.

Answers to Queries.

1. Necessarily but not unduly impeded, and not rendered more expensive "than it ought to be."

2. I think the want of an efficient system (such as now prevails in Ireland) must render the disposition of land less secure. The purchaser must incur the risk of claims arising upon instruments of which he had no intimation, and against which he can only rely upon the uncertain defence of a plea of purchase without notice, upon the covenant for title, or upon an indemnity, if he has one.

3. A judicious public register renders a purchaser more secure against secret acts, and is often productive of much saving of expense, time, and trouble in making inquiries and procuring evidence to remove apparent objections to the title. In this way sales and transfers may be facilitated, and in no other, in my opinion.

Mr. R. C. Bowen.

4. Only by making the buyer more safe and secure. The state of the title and all the circumstances attending or affecting it are matters of fact existing at the time of the contract for sale. These matters of fact may be indicated and the discovery of them facilitated by registry. If you want to simplify a title or facilitate the transfer of a property surrounded by a certain state of facts, by the removal of those circumstances and the separation of them from the property which they affect, it will be difficult, in my judgment, to accomplish this end by a mere registry of the title.

5. Any immediate saving would be to the vendor, upon whom the duty rests of making out a good title. The buyer may be saved from future litigation and consequent expense by having the difficulties attending the title pointed out to him in time.

6. I do not know the average proportion.

7. Judging from the only attempt that has been made in Ireland, that of Sir John Romilly, I do not think it practicable to do so with any beneficial result.

8. I think not.

6. In my opinion, every estate and interest in the land should be found either on the books of the registry or in documents to which attention is directed by searching those books. Any complicated system would rather mislead than facilitate the party making a search, and I therefore prefer a simple register of assurances by memorials or abstracts of them, with good indexes of lands and of the names of grantors, to any registry under heads of title.

10. Assuming the purposes in view to be, so to simplify the title as to render retrospective inquiry unnecessary, it would be essential to adopt the principle of exhibiting only the present actual title, coupling it either with a prohibition against further investigation or a protection against prior claims, or the abolition of all prior interests, or some such violent interference with somebody's rights. The mere adoption of the principle, without some such accompaniment, would not avoid an inquiry into former dealings. The effect would be merely to render the registry useless; but a purchaser will not dispense with the investigation of the past history of the title merely because a registry has been established in such a way as to give him no information on the subject.

11. Not if it is put upon a proper footing.

12 to 15. Upon reading these queries I cannot but perceive that they are framed to meet certain views and a certain set of ideas, which, in all probability, I do not even understand. If I were to answer, that the very existence of such questions was sufficient to show the impropriety of an attempt to make registry subservient to the "simplification" of titles,—that I could not comprehend how there could be a registry upon which any form of ownership should not be admissible, or how one form of ownership should be turned into a trust,—or why trusts and equities should not be protected, or should be deprived of their position as against the lands, or as affects the title, or should be turned into personal confidences or covenants,—or how there should be any process by which a man, called the owner, should be prevented from transferring his land, or how registry could or ought to be made instrumental for such a purpose—the probability is, that, on explanation of the real object of those queries, which they do not convey of themselves to the mind, all my notions would turn out to be quite wide of the mark, and to have nothing to do with the subject really intended to be considered and answered.

16. According to my notions, imperfect as I believe them to be, of the system proposed, I do not think there would be such a thing as "a simple register of title" on the principle here mentioned, and I do not think the existing system of settlements could be continued consistently with the attempt to establish such a register.

17 to 24. If I attempted to answer these queries seriatim, I should feel the same difficulty I have mentioned before,—that of attempting to answer with one set of ideas questions framed with a view to another set. I think all deeds and instruments by which estates or interests of any kind are created should be registered so as to apprise purchasers of their existence and nature, and I should, for many reasons, prefer the registry of a memorial to a deposit of the instrument. I do not think registry should have any operation to "stop" the transfer of land, or to restrict any man in the free exercise of his ownership; and the whole system of caveats, distringases, &c., is quite at variance with the principle of registry, according to what I conceive to be its legitimate use.

24. For the reasons I have given, I do not feel myself able to appreciate what is meant by the "improper alienation of land by the registered owner."

25. I do not, in proportion to the number of trusts that exist.

26. Quite objectionable.

27. It would in my opinion, be unduly impaired.

28. A public map would be an additional guide, so long as boundaries continued unchanged. In case of any change, the map would cease to be useful, save as evidence of what the boundaries had been when the map was drawn. I have known of changes being made in boundaries since the Ordnance survey, and the maps were rendered comparatively valueless as to those boundaries. I do not think, therefore, that a map can be relied on as a permanent means of ensuring accuracy in the description, as a means of affording security to purchasers, while there is no law to prevent a man from removing his own landmarks.

29. I doubt whether it would be effectual. The registrar should either take the description or the identity from the statements of parties, which statements they would, for the sake of their own interest, make equally accurately without his interference, or he must

hold a kind of judicial inquiry, and go into evidence, and so, while the transfer would be facilitated in one way, it would be impeded in another. *Mr. R. C. Bowen.*

30 and 32. I am sure that neither at the outset nor at any other time ought registration to confer a title; that it could not with any propriety be made to do so without having all rights adjudicated upon; and that if this were attempted, involving, as it would do, a kind of equity suit on every transfer, the registrar should have very extensive judicial powers. But I would submit that any attempt of this kind would rather impede than facilitate the transfer of land. I should say that, unless to aid in establishing such a system, and to confer a warranted title by registry, the powers and duties of the registrar should be wholly ministerial.

31. So far as relates to acts *inter vivos*, I am inclined to think registry should be made a condition precedent to the operation of the deed. Wills stand upon a different footing; and I do not think registration of them in the lifetime of the testator ought to be made compulsory. Parties claiming under them might be bound to register them, as a condition precedent to the prosecution of any claim under them; but it would, in my opinion, be very dangerous to give any other effect to the registry of them than as evidence of their existence. Registry should have no effect upon the validity of a testamentary instrument. The provisions of Sir John Romilly's Act, 13 & 14 Vict. c. 72. s. 27., appear to me to have the effect of setting up, in certain cases, a document as the will of a party, which, *not being his last will, is not his will at all.*

33. I am unable at present to see what difference it would make. The Incumbered Estates title in Ireland creates a new starting point, and all former interests have been cleared away, by having been fully adjudicated upon and satisfied, or otherwise disposed of. In the course of time parties will search back to that root of title, as they formerly searched for sixty years. They would, in the case supposed by this query, continue to search back to the commencement of the registry, unless they were prevented doing so by some express enactment. They would, according to the terms of this question, also investigate the past title, until, by lapse of time, it became unnecessary. In short, they would make an investigation for the same period after as before the commencement of registry.

34. The Irish registry, the Ordnance survey, the valuation, and the Incumbered Estates Court, have all their respective advantages, and some of them their disadvantages also; but I do not think any of them afford any advantage for the introduction of a permanent system to facilitate the sale and transfer of land. I look upon such a system, so far as I have been ever able to collect the views of its advocates, as subversive of the rights of property, and therefore impracticable.

35. The only attempt to establish this species of security that I have known was made by Mr. Vincent Scully. It is some time since I have seen the bill introduced by him to establish land debentures. It appeared to me objectionable, as containing restrictions upon the creation of other charges upon real property: restrictions which I look upon as incompatible with the rights of property. I do not think any public advantage can result from any of those attempts to simplify titles and facilitate transfers by fettering the owners in the enjoyment of their rights. In effect, you say to the owner, "I will facilitate your "dealings by preventing you from dealing, except in the exact mode that I please." It appears to me that the sacrifice would outweigh the benefit, if any, to be obtained.

36. The Ordnance maps are very perfect, and much used in the letting and sale of lands. Many persons get farm maps made from them on an enlarged scale. I cannot give particulars as to the expense of the survey or the time it occupied.

ROBERT C. BOWEN.

Dublin, 10th January 1855.

Mr. B. CLIFFORD LLOYD, Q.C. (Dublin).—Received 11*th January* 1855. *Mr. B. C. Lloyd, Q.C.*

As this paper has reached me only within the last fortnight, I have not had sufficient time to consider the subject involved in many of the questions proposed. I should therefore wish to confine myself to those upon which my practical experience has enabled me to have formed an opinion.—B. C. Ll.

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2 and 3. I think the disposition of land is both impeded and rendered insecure by reason of the want of a registry of title. In Ireland, where we have the experience of a registry, every well informed real property lawyer knows what searches to direct, and a purchaser who takes under a registered conveyance is almost always quite secure, if no act appears on the registry to affect the title. But I consider the registry would be greatly improved if it were made *notice* to all the world; and that a purchaser deriving under a registered conveyance should not be affected by any *unregistered* conveyance, except in some instances of actual and direct fraud, which could easily be defined.

4 and 5. The investigation of past title is often avoided and expense saved by a registry, if, as in Ireland, both legal and equitable titles may be registered, inasmuch as it saves the necessity of investigating the title to find out and get in a conveyance of the legal estate, and also the injustice that otherwise might ensue from the fact of the title deeds having got into the hands of persons not equitably entitled to hold them against a bonâ fide purchaser, who by that circumstance may lose his priority, as, I believe, is often the case in England.

Mr. B. C. Lloyd, Q.C.

9. I think that every thing that affects or is to be considered as affecting the lands as against a purchaser should be put upon the registry, whether the purchaser be the purchaser of the fee, or of any derivative interest under it, and that there should be but one place or office for the registry, either of an act, or charge, or judgment affecting the lands, in order that the purchaser may see at once by what he is to be affected. In Ireland an inconvenience is felt from having judgments registered in a different office from deeds affecting the lands, and from the fact that mere charges need not be registered. I mean by mere charges equitable charges which do not operate to transfer the lands, and excluding judgments which are the subject of distinct enactments This latter defect in the system sometimes exposes the purchaser to claims he has no means of discovering.

12 to 25. A system that would admit to the registry *only one* form of ownership, excluding all beneficial and equitable interests, although it might give greater facility to the transfer of land, would, in my mind, be productive of dangerous consequences. Frauds have very frequently (within my experience) been committed by trustees of stock; and if it were not for the protecting and restraining power of the Court of Chancery, such frauds would, I believe, be very numerous. I would prefer to take the course of simplifying conveyances and titles, which I think would, in a great measure, be effected by restoring what was intended by the 27 Hen. 8. c. 10., the Act passed for uniting uses to possessions, but evaded by the contrivances of the judges and lawyers of that period, in order to get rid of the restrictions imposed by feudal tenures. If this were done, active trusts, that is, duties to be performed by mere trustees, might be reduced to mere powers, without, in the meantime, and until the execution of such powers, disturbing the beneficial enjoyment of the cestuique trusts; and all the maxims and technicalities of law borrowed from feudal tenures might be got rid of, by enacting that such forms as would be good to support a mere equitable limitation should be held sufficient for a limitation of the legal estate. I should think that by these means conveyances might be made very short and simple.

28. I do not think any inconvenience is felt in Ireland from want of a public map being attached to the registry. The parcels are described on the registry, and even though they should be inaccurately described, the purchaser finds no difficulty in discovering what was intended to be described; but I think the system might be improved by adopting the Ordnance maps, and having distinct places or heads of reference for every act affecting any townland in a county, or street in a city. This would give greater facility in making searches.

30 to 32. I at one time thought that if there were to be established some court for the investigation of title, as is now done by the Incumbered Estates Court in Ireland, a warranted title to be admitted to the registry might be allowed at the instance of any party desiring to submit his title to such investigation; that warranty should be denied in suspicious cases; but when allowed, it should form the root, behind which it would be unnecessary to carry any investigation; and it should be distinguished on the registry by a peculiar form of instrument, leaving subsequent transfers to be registered in the ordinary way, until a fresh warranted title should be given. But to effect this a previous investigation should take place by competent persons, similar to what now takes place in the case of titles to estates brought into the Incumbered Estates Court, namely, an investigation of all the deeds, and notice given to all parties appearing to have an interest in the estate to be warranted. This I still think might be made a primâ facie evidence of title, and if not impeached in a given time, say a short term of years, after the deed is put upon the registry, and notice of it given, might pass into an absolute and unimpeachable title, at least for the purposes of sale, and thus retrospective investigation of the title avoided in the case of a sale to a purchaser. But then all parties, or their trustees, should have the power or right, within the prescribed period, to show cause against the title, and not wait until their interests are reduced into possession. Formerly, a fine, with proclamation, had something of this effect.

B. Clifford Lloyd, Q.C.

32, Upper Pembroke Street, Dublin.

Mr. R. Griffith, LL.D.

Mr. Richard Griffith, LL.D. (Chairman of the Board of Public Works, and Commissioner for the General Tenement Valuation of Ireland, Dublin.)—11*th January* 1855.

In reply to the three supplemental questions relating to Ireland,—

34. I beg to state that in my opinion the existing registry of deeds, the townland Ordnance survey, and the uniform valuation made in connexion with that survey, as well as the machinery of the Incumbered Estates Act, are important and essential elements towards the introduction of any permanent system to facilitate the sale and transfer of land in Ireland. As will be seen in my reply to the 36th question, the townland Ordnance survey on a scale of six inches to a mile may conveniently be used as the basis or ground work for all transfers of land, as well in regard to the local situation and detail of the circumstances of every portion of land to be sold or transferred, as to its value with reference to the general tenement valuation now in a forward state, and which has been completed in the provinces of Leinster, Munster, and Connaught; and when any sale or transfer has been effected, both these documents can be advantageously used, as instruments for reference and registry.

Mr. R. Griffith, LL.D.

35. In regard to question No. 35, I cannot say that I have given much consideration to the subject of the issue of transferable debentures or certificates chargeable on land in connexion with the object of facilitating transfers by a system of the registration of ownership or title, but I have experienced the advantage of such an arrangement from the issue, by the Commissioners of Public Works, of debentures transferable *by indorsement* chargeable on land, the subject of improvement by arterial drainage, under the provisions of the 8th & 9th Vict. cap. 69. sec. 9., and can state that the system worked successfully.

36. The townland Ordnance survey of Ireland is laid down on a scale of six inches to a statute mile, and accurately represents in plan all lakes, rivers, and streams, all roads, bye-roads, and pathways, the boundaries of counties, baronies, parishes, and townlands, by characteristic dots, and all subdivisions into fields by single plain lines.

It also represents all buildings both in towns and country, and, in addition, the contoured maps give accurately the elevations above low-water mark.

The contents of every townland are engraved on the plan, and the area covered by water (where any occurs) is also given.

This survey has been used as the basis of the general tenement valuation of Ireland, according to which all general and local taxes or rates, leviable on lands or buildings, are collected.

The valuation schedules contain the area of every tenement, however small, whether in county or town, together with the value of the land and of the buildings, in separate columns; the boundary of every tenement, not less than one acre, is laid down on the ordnance plans, and the area ascertained, by measurements made from the plans themselves; but the area in all cases of tenements, less than one acre, is ascertained by special measurements made by the valuator.

The accuracy of the Ordnance survey, in its most minute details, is thus put to a severe trial; that it stands the test in a remarkable manner, is proved by the rarity of appeals made in consequence of inaccuracy of area, and where such have occurred, it has generally arisen from mistakes having been made in regard to the boundaries of the tenement in question.

In addition to the valuation, the ordnance townland survey has been universally used in laying down the lines of all the great river drainages undertaken in Ireland under the superintendence of the Commissioners of Public Works, and also in determining the area of the lands improved.

It is likewise used as the basis for executing all works of thorough drainage in this country under the Land Improvement Acts, and for numerous other works of a similar character.

The civil engineers employed on the several lines of railway in Ireland have universally adopted this survey as the groundwork for the parliamentary plans. It has likewise been used by engineers in laying out new lines of road throughout the country.

It is evident from the foregoing that the ordnance survey of Ireland has been much used for public purposes of the most detailed character, and in fact it is applicable to every purpose connected with the occupation, valuation, or sale of lands; as documents for registry it is perfect, as, in addition to the detail of the external boundaries of the property in question, every internal subdivision, open or covered drain, or building completed at the time of registry, can be accurately represented on it.

In regard to towns and cities, the Ordnance survey is laid down to a scale of five feet to a mile, or ten times that of the townland survey; that in each case every house or building, and the boundaries of the tenement in connexion with it or them, is clearly and accurately laid down on the plan, which plan is used by the valuators in making a separate valuation of every tenement within the town, each of which is numbered on the plan to correspond with the number contained in the schedule of the tenement valuation of the town. I am not aware of the total cost of the Ordnance survey; it was commenced in the year 1825, and completed about the year 1845. It is at present under revision in the northern counties.

Mr. W. Smith.

Mr. Wm. Smith (Barrister, Dublin).—12*th January* 1855.

1. So long as land is to be the subject of family settlements and of specific incumbrances, an investigation of title will be necessary. I do not consider that the sale or transfer is impeded or rendered more expensive than it ought to be, by the necessity of such investigation. If properly investigated on one occasion the investigation on a subsequent transfer will be much less expensive than otherwise.

2. I think the disposition is rendered more secure by reason of the registry of assurances such as exists in Ireland. I think a registry of *title* such as this question suggests would be found impracticable and expensive.

3, 4, & 5. I think the establishing such a register altogether impracticable, consistent with permitting land to be the subject of trusts, family settlements, and incumbrances.

6. No means exist to enable any person to answer this question, or to strike any average; as the expense depends on the nature of each title, and the length of the periods and number of parties through whom the property may have passed, and as against whose acts searches in the registry of deeds and for judgments are to be made; and has no reference to the amount of the purchase money.

Mr. W. Smith.

7. I am decidedly of opinion that it is not—if land is to be the subject of family settlement, of trusts, and of specific incumbrances.

8. Answered. See No. 7.

9. The ramifications of property which should be, in my opinion, comprised in any such supposed registry of title, would alone, in my opinion, render it impracticable to establish any such registry, which would, I think, only render dispositions of land more difficult and insecure than they are at present.

10, 11, 12, 13. I think not. Any such attempt would, in my opinion, tend to great injustice and a violation of existing rights.

14. I think it would not.

15. I think they might, but doing this would neutralize the proposed object, by rendering an investigation of title involving such trusts and equities still necessary.

16. I think not, and see answer to No. 15.

17, 18, 19. I think not, and see No. 15.

20. This question suggests another, to show the impracticability of any such supposed register of title.

21, 22, 23, 24. Answered in No. 17.

25. The proceedings of the Equity Courts show that unfortunately such cases are frequent and numerous.

26. I think upon any registry the trusts ought to be disclosed, and in this way the rights of beneficiaries are afforded protection, without any distringas, &c.

27. I am decidedly of opinion that they would be unduly impaired by the acts and forms suggested.

28. I think not; the Act 13 & 14 Victoria, Chap. 72., which has since its passing remained a dead letter, being found, as I believe it to be, wholly impracticable, shows the futility of any such attempt. That Act if brought into operation would, in my opinion, leave the security of title dependent on the knowledge of geography which the attorney's clerk employed to register might possess.

29. I think not. I have clearly stated my opinion as to the impracticability of establishing any such registry.

30. I should consider it improper and dangerous to invest any "Chief Registrar" with judicial authority for any purpose.

31, 32, 33. Answered No. 29.

34. I think not, beyond what applies equally to England; and I think that upon such a subject the law as to both parts of the Kingdom ought to be the same. This I consider a vital principle with reference to landed property.

35. I have considered the plan contained in a Bill introduced into the House of Commons in 1853, by Mr. Scully. I consider the plan decidedly objectionable, and especially with reference to "The Land Tribunal" proposed to be created.

36. I am unable to reply to this question further than as appears on those maps, which have been so admirably executed. I think they are of great use in dealings relating to land in Ireland, and so as to render private or separate surveys unnecessary in general.

WILLIAM SMITH,
Barrister-at-Law,
No. 15, Merrion Square, South, Dublin,
12th January 1855.

Mr. R. Longfield, Q.C.

MR. ROBERT LONGFIELD, Q.C. (Dublin.)—13*th January* 1855.

I HAVE the honour of transmitting to the Commissioners answers to such of the queries as I consider myself competent from professional experience to answer with tolerable confidence.

1. I consider that the sale and transfer of land is still impeded, and more expensive than it ought to be, arising from the necessity which now exists that any prudent purchaser should investigate the title, at the least for the period intervening between the last bonâ fide purchase for money and the time of the contract.

2. The ready sale or disposition of land is impeded by reason of the want of a registry of the title to the land. The title is a technical artificial deduction of fact from the assurances affecting the land, and which it requires a long and skilled experience to methodise and safely interpret. There is not much *insecurity* arising from the want of registry of title. A prudent, cautious purchaser, willing to undergo the expense and delay of investigating fully the title to an estate, is sufficiently secure.

3. The sale and transfer of land would, after a lengthened interval of years, be much facilitated by the establishment of a public record of the title to land. For some years there would exist against such a register much professional and unprofessional prejudice and jealousy. There would continue to be great ignorance of its beneficial operations and probable effects, and of the mode in which vendor and purchaser could expeditiously and cheaply avail themselves of its advantages.

4. The increased facility of sale and transfer would be obtained almost wholly by avoiding the investigation of the past title. The expense of the mere deed of transfer would also be diminished; but this source of expense I have never considered as the serious grievance in the present system. The buyer would, of course, be more secure.

Mr. R. Longfield, Q.C.

5. If a register of title were established, and efficiently worked, the expense of a sale of land would be diminished both to the seller and buyer. On sales of land, at present, both parties must incur considerable expense; the vendor in deducing title; the purchaser in the investigation of it. If a perfect and parliamentary register of title was established, a seller might say, "Here is my certificate of title to such a property; the price is so much;" and in a week at farthest the bargain,—effectual and cheap transfer,—could be concluded. I have known instances of similarly rapid sales of property which had been recently purchased in the Incumbered Estates Court. The registration of the conveyance in fee from the Commissioners is considered to give a complete parliamentary title; and persons who have bought from the Commissioners frequently sell again, either on an advance of price, or to consolidate their properties in some peculiar locality; and the second purchaser is always satisfied with a common registry search, occupying but a few hours at farthest, and at a most inconsiderable cost. The transfer deed is then almost the only expense incurred by either party.

6. No reliable approximation to an average of the expenses of a purchase of land arising from the investigation of title could be made by any one. Some extreme instances, one way or other, might readily be given; but nothing like a fair average could be stated. The expense, moreover, has hitherto been so great, that many purchasers prefer incurring the risk from not investigating the title to the expense and security, the price for the insurance bearing so large a proportion to the price of the land itself.

7. It would be practicable gradually to form a register of title (as distinguished from a register of assurances), by introducing a uniform system of sale, transfer, and charge, and by an alteration of the general system or code of real property.

8. The register, when in operation, would materially shorten and simplify the titles to land and the forms of conveyance. The instances I have already given of re-sales of properties bought from the Commissioners of Incumbered Estates, and similar re-sales of properties which took place shortly after the grants under the Acts of settlement and explanation, and forfeited estates Acts, and which I have met with in professional experience, sufficiently illustrate the benefit of a clear parliamentary registered title.

9. The recent tendency of legislation has been to facilitate the gradual introduction of only two or three classes of ownership in land; viz., the owner in fee or fee farm, and the terre tenant. The various Acts for conversion of the usual Church leases, and lives renewable for ever, and sub-letting Acts, have had a very extensive operation in carrying out this desirable change. Public feeling, and the conviction of owners of estates, are also strongly tending towards the same result,—the extinction of "middle interests;" and I would consider it undesirable, even if practicable, to put upon the register of title any forms of ownership besides the fee or fee-farm proprietorship of the land, and perhaps the tenants' leases.

10. The register should exhibit merely the actual existing title to the full, absolute ownership in the land. All deduction or history of the title should be at the first avoided. The several subsequent transfers would, of course, concisely state by and to whom the transfer was made.

11. If the history of the title was deduced, the proposed register would not at first beneficially or usefully differ from a register of assurances.

12 to 24. In my opinion it would be exceedingly difficult, if not wholly impracticable, to form a good working register of titles, without an alteration in the law of real property. Uses, trusts, limited estates, contingent limitations, and all the frivolous and capricious dispositions of estates by will and settlement, should be prohibited. I know of no benefit which has arisen from permitting them, and of no argument which has been used to prevent what are technically called "perpetuities," that would not apply with equal force to the abolition or at least a very great restriction of the power of creating such absurd species of restricted rights of ownership in the soil. I am not singular in entertaining such an opinion. The necessity for such alterations in the law of real property is glanced at in the report of July 1850 by the Conveyance Commission. I think it would be wholly destructive of the principle of a register of title to allow uses or trusts, caveats, &c., or any of the matters alluded to in Questions from 12 to 24 inclusive. The introduction of such a system as stops, caveats, &c., would lead to a cumbrous and expensive machinery, and neutralize all the contemplated benefit of a register of titles.

25 and 26. The instances of misappropriation or misdealing by trustees of stock or money, involving loss and often almost total ruin to their beneficiaries, are unfortunately frequent and numerous, the temptation, and facility of concealing such breaches of trust, being great; but I would not consider the frequency of those instances the least argument against bestowing similar powers as to real estate on registered trustees, the advantages on the whole very much outweighing the probable evils, and there being less likelihood and possibility of abuse in cases of real estate.

27. I do not think that the security of settlements or trusts would be unduly impaired by their ceasing to bind the title or follow the land; but I must observe, that I am not at all an advocate for fettering real estates, either by settlements or trusts; and a long and tolerably extensive observation of their results convinces me that they do not advance a single beneficial end. The chief argument generally used for their continuance is, the

Mr. R. Longfield, Q.C.

necessity of preserving the aristocratic and landed interest in a proper position in the state. I am convinced that, even admitting the necessity, the means adopted do not effectuate their object, but rather defeat it. Prudence is never secured by law, but by example and education; and the very imposition of fetters makes a person anxious to break them; and every argument in favour of giving tenants either what has been termed fixity of tenure, or even long leases, applies in theory, and in fact more strongly, in favour of ownership in fee, and against restricted ownership, tenancies for life, &c.

28. To ensure accuracy and prevent litigation it would, I conceive, be necessary to connect the registry of title with a public state map. The principle and use of such a state document, conclusive as to boundaries, contracts, &c., has long been familiar to the profession in Ireland. The Down Survey has always been deemed conclusive on such questions between what is termed the "new interests," *i.e.*, grantees of estates under the Acts of settlement and explanation (temp. Charles II.), and comprehending many thousands of grantees and millions of acres. The Ordnance survey might beneficially be adopted as the basis of a new system.

29, 30. The registrar should have no judicial authority. His office should be solely ministerial; his duty should be merely to look at the last entry as to any land, see that the vendor of it was the registered proprietor, that the deed of sale was executed, &c., as required by statute; he should then authenticate and register the transfer to the purchaser.

31. The registration should at the outset be voluntary; but the subsequent transmission of estates, once registered, or brought under the new system, should be strictly and entirely regulated by the new statute law.

32, 33, 35. I think that, with proper safeguards, the registration might at the outset confer a Parliamentary title. The system might well be introduced by applying it at the first to all sales of fee simple estates which have already taken place under the operations of the Incumbered Estates Act, and permitting any purchaser, on a certificate from the Commissioners, or other proper tribunal, of his purchase deed, and satisfactory searches since, to register his proprietorship. As to all subsequent sales, in that or any other Court, similar privileges might be conferred on the grantees; and thus gradually, perhaps, but certainly, the system might be introduced and applied very extensively, until, in a generation or two, it embraced the whole of Ireland.

The introduction of transferable debentures or certificates for sums charged on land would be a valuable improvement in our landed system. The only project which I have much considered on the subject is that proposed by Mr. V. Scully, M.P., and that, with a very careful machinery for the issue and collection of the interest and principal secured by the debentures, would be useful. The amount of debentures authorized to be issued on any estate might be fixed by the price *bonâ fide* paid on the purchase which entitled the owner to be a registered proprietor. Thus: Suppose the sale took place before the Commissioners of Incumbered Estates for 10,000*l.*; at foot of the conveyance might be a certificate authorizing 100 debentures of 50*l.* each, or 5 of 1,000*l.*, as seemed preferable. The debentures should be issued through a state bank, like the Bank of Ireland, in the first instance, and the bank should collect the amount of interest and principal, as it now does on private bills. A small per-centage on the issue and collection would abundantly pay the bank, and ensure the holder due payment.

Mr. C. E. Dobbs, jun.

Mr. Conway E. Dobbs junior (Barrister, Dublin).—*15th January* 1855.

1. I do.
2. It is.
3. Undoubtedly.
4. Registration of assurances would diminish expense of transfer, and render buyer more secure. Registration of title, if practicable, would accomplish all these purposes.
5. To both, but principally to seller.
6. I cannot say.
7. I think it is, but very considerable alterations of the present law would be required.
8. A register of title could only be framed by simplifying the title, and if effected would necessarily simplify conveyances.
9. All estates in land, other than agricultural leases, must be capable of registration. It would be necessary, I think, to admit on the register only those well-known forms of ownership, such as estates for life, in tail, for years, in joint tenancy, and tenancy in common.
10. I think a registration of title, as distinct from the registration of assurances, would be useless, unless the retrospective inquiry was thereby avoided.
11. I think not.
12. Such would necessarily be the result, for an interest in land not capable of registration could only be protected from destruction by means of a trust.
13. Certainly necessary.
14. They should confer no right in the land as against a *purchaser*, but might as against registered owner whilst a trustee, or parties taking as volunteers from him.
15. I see no reason against a limited protection.

16. I endeavoured, in the paper I have forwarded, pages 16 to 25, to sketch the outline of a plan by which it appeared to me possible to reconcile the retention of settlements with a simple register of title. *Mr. C. E. Dobbs, jun.*

17. I may say adequately, if increased facilities of transfer be deemed to outweigh the diminished security.

18. I think whilst uncancelled it should altogether prevent a transfer.

19. I think all should prevent a transfer.

20. I think all, at least for a limited period.

21. If for more than a limited period, it should describe interest; if only for a limited period, name and address should be sufficient.

22. I have formed no opinion on this subject. If distringas for a limited period, it would be as well to let it be renewed by assignee.

23. The provisions of the 13 & 14 Vict. c. 72. seem sufficient; namely, a requisition in writing to be delivered by party, accompanied by an affidavit of having interest.

24. I cannot.

25. Perhaps not numerous, considering amount of property invested.

26. I think the intrinsic nature of land would prevent the possibility of finding trustees willing to accept such trusts, and the result would be the abolition of settlements.

27. It is, as I have already said, a comparative question. The security of settlements would be undoubtedly impaired, and would be the price paid for increased facility of transfer.

28. It is of the utmost importance, whatever plan of registration be adopted, that a map should be made the basis of it.

29. If registration be made with reference to a map, identity of party conveying would be principal inquiry for registrar.

30. Certainly not, except to ascertain identity.

31. If a registration of title, voluntary; if a registration of assurances, compulsory.

32. If a register of title, it should confer a parliamentary title after a certain lapse of time.

33. In this case full advantages of registration would be postponed for 60 years.

34. Whatever system be adopted, these confer great facilities in Ireland to its establishment.

35. I have not considered any plan of land debentures, but I think any plan of the kind open to most serious objections. The true object is facility of transfer, and not facility of incumbering. It is not desirable that land should ever be made a subject of temporary investment; and nothing, in my mind, would be more destructive to the interests of the tenant than the introduction of any system which would render land available as an investment to persons still engaged in the uncertainties of trade. I confess I would be much more disposed to restrict the power of creating incumbrances, than encourage it in the way proposed.

36. I have none.

Sir, 6, North Great George's Street, Dublin.

As the questions forwarded to me relate to a subject on which I read a paper about two years ago, before the "Statistical Society of Dublin," I beg to enclose you the paper, and to refer to pages 17 to 25 for an outline of the plan that I then submitted for consideration. I may add, that I was induced to make the suggestions there made by a desire to answer, if possible, the question that I see is proposed in your 16th query, namely, whether the existing system of settlement could in any degree be made consistent with the principle of a register of title as distinct from a registration of assurances; and as the questions forwarded are evidently framed with a desire, if possible, to provide such a register of title, perhaps something may be found in the paper suggestive of what may promote that object.

At the same time I think it right to say, that the further consideration I have been able to give to the subject has made me doubt the practicability of bringing into operation any such scheme. If the difficulties which I anticipate be found insurmountable, I would suggest the carrying into active operation the provisions of the 13 & 14 Vict. c. 72., with certain changes and additions, which I will presently proceed to mention. I may observe, that the principal improvements on the former Registry Acts proposed by that act are these; the making the Ordnance maps the foundation of the register; the deposit of the deeds themselves, and not merely memorials of them; and the bringing on the register compulsorily all wills and every other document that can affect the title to the land. But the provisions contained in the 5th and 6th sections of that Act are so complicated, and difficult to be understood, that they have, I believe, deterred the authorities from taking any step towards bringing that act into operation. The provisions which have thus, as I conceive, deprived the public of the benefit of that act, seem to me of no real importance, when registration is founded on a map, for, after all, the best symbol and the best index of title will be the name of the townland as described in the Ordnance map; and all registration being made with reference to it, one search will disclose all dealings with respect to it.

I would therefore, as the most practicable scheme, at least for Ireland, suggest,—

1st. That all the provisions of the 13 & 14 Vict. c. 72., omitting sections 5 and 6, be re-enacted.

Mr. C. E. Dobbs, jun.

2dly. That in all cases where there has been a conveyance from the Commissioners of the Incumbered Estates Court the new registration commence with that conveyance, and to that extent and for that purpose the act should be retrospective.

3dly. That every conveyance made under a decree of the Court of Chancery confer a parliamentary title, in the same way as a conveyance from the Commissioners of Incumbered Estates Court does at present; and that in all cases of *unincumbered owners*, who shall contract for the sale of land, they shall be at liberty to contract to give a parliamentary title, and to carry out such contract be enabled to file a petition in the Court of Chancery for a sale; and the conveyance made under a decree in such petition matter should confer a parliamentary title, just as in any other case of a judicial sale. I have been informed that this has been done indirectly through the Incumbered Estates Court, the party wishing to sell creating an incumbrance for the sole purpose of giving the Court jurisdiction.

This extension of the principle of the Incumbered Estates Court would gradually bring the greatest part of the land in Ireland under the provisions of the new registration act, and would thereby prevent the necessity of searches in the old defective register.

4thly. As it would be most desirable that legislative provision should be made for the insertion of powers of sale and exchange in all settlements, it might be enacted that in all cases of settlements, where powers of sale and exchange were omitted, the tenant for life in possession under the settlement should be deemed an owner, within provision of the third suggestion.

With these changes, I think the plan of registration contained in 13 & 14 Vict. c. 72. would remove the greater part of the evils of the present system. The registry acts in Ireland have been found effectual in removing many of the difficulties that have arisen in England in the transfer of land, and the searches, when properly made, give complete security to the purchaser. The great evil that counterbalances these advantages has arisen from the expense of searches, particularly in the case of small estates. This expense would almost entirely cease when registration is made with reference to a map, and not with reference to the names of persons.

Of course, no registration of assurances will remove the necessity of making out title for sixty years, and that source of expense and delay will necessarily continue, and will always prevent land being transferable with the same facility as stock or personalty; but the expense will be greatly diminished in amount, as expense of search will be nearly nominal, and other expenses would be principally those of scriveners and the opinion of counsel. However, when we remember the intrinsic difference between these kinds of property and land, the possession of which can never be considered as evidence of ownership, and that one parcel of land never can be an exact equivalent for another parcel, it seems impossible to assimilate their transfer.

I need hardly add, that it is with the utmost diffidence that I venture to make these suggestions, and will only express a hope that something may be found in the foregoing observations calculated to promote so desirable an object as increased facility to the transfer of land undoubtedly is.

I remain, &c.

G. W. Sanders, Esq.,
&c. &c. &c.

Conway E. Dobbs junior,
15th January 1855.

The Right Honourable F. Blackburne (Dublin).—16*th January* 1855.

The Right Hon. F. Blackburne.

1. I think they are.

2. The want of a registry has the effect suggested, or, I should rather say, an effectual registry would tend to facilitate and render more secure the transfer of property in land.

3. It is facilitated by the public registry in Ireland of the deeds so relating to land.

4. Such facility is obtained here by the public registration of deeds so constituting the evidence of title; the expense of investigating the title is certainly diminished by it, and the buyer is rendered more secure; a registry of title would add to this facility.

5. The expense to both would be diminished.

6. I have no means of intimating such a proportion.

7. There might be a registry of title; if, for example, the title of the proprietor was established by a judicial decision made conclusive of its validity by act of parliament, and if there were a survey of the estate, conclusive of the identity and the boundaries of the land.

8. A recorded decision of a legal tribunal establishing the validity of the title would have this effect.

9. I am not prepared to say it should be limited to any estate in land, to the exclusion of all or any others. If there be a registry of title it should extend to all estates and to all lands.

10. The judicial decision would declare and establish the title, and, if of the effect stated, would render retrospective inquiry unnecessary.

11. It would not be a registration of an assurance or conveyance, but of a judicial decision.

12 to 24. I do not see how, in consistency, any title should be excluded from the right of registry. All these questions would seem to me not to admit of precise or satisfactory

The Right Hon. F. Blackburne.

answers, without assuming the establishment and existence of some registry of title. Whether this be practicable or not, I do not undertake to say; but, with the views I entertain of what such a system should be, I confess myself unable to devise the means of establishing it. Tending, as it would directly do, to alter the transmission of real property, such a measure I conceive should be *general*, and extend to *all* transferable *estates*. I cannot see where to lay down a limit, leaving some estates to be governed by the new, while others are to be governed by the old system and by the now existing laws. But whether *all* or only some owners of existing estates and interests are to have their titles registered, I do not see how anything short of a judicial decision in the title and right of the owner of the estate could warrant its introduction on the registry. Is this registry then to be optional, available to those who are willing to submit their titles to the tribunal (whatever it may be), and is it to leave all other persons and titles as they are? This would leave the transfer of real property liable to two distinct codes of law, and be most objectionable. But if it is to be compulsory on all, how is it possible to provide for the investigation of the title that should precede registry, including, of necessity, a decision as to the identity and boundaries of the lands? But supposing all these difficulties surmounted, and that a register is established, affording to a purchaser conclusive evidence of the right of the vendor to sell, I confess that such protection as that which a caveat or distringas would afford to persons having beneficial interests, would seem to me to be of very little value indeed. These interests are now protected by registry (generally in *Ireland*), and both in England and Ireland by the doctrine of notice, and by the caution of the purchaser and the inquiries which his own interests suggest. While I fully admit that a vast expense is caused by these precautions and inquiries, and that it reduces to some extent the value of property in land, I also am certain that in the estimation of men who invest their capital permanently in land, the value of it is increased by the difficulties of its transfer, and the protection which the law affords to all who have securities affecting it. For speculative and commercial purposes I fully admit, that to make its transfer and the transfer of securities upon it (debentures, for example,) as easy and simple as that of stock, would add to its value by making it answer all the purposes of temporary investment.

25. I think them very frequent and numerous.

26. I think it is objectionable.

27. I think they would be unduly impaired.

28. I think each title must necessarily be accompanied with a map.

29. Certainly.

30. Answered already.

31. See my remarks on this matter generally.

32. I have already said what occurs to me on this and the next question.

33. I think not.

34. They all, in some degree, tend to facilitate the investigation of title.

35. I cannot say that I have formed any views or plans on these matters that it can answer any end to communicate.

36. I cannot give any information on these heads.

F. BLACKBURNE.

The Right Hon. A. Brewster.

The Right Honourable A. BREWSTER (Attorney-General, Ireland).—16*th January* 1855.

1. If any means can be devised to render the retrospective investigation of title unnecessary, a considerable saving of expense will be thereby effected, and this would be desirable.

2. The registry of a defective title could not much mend matters; but if there be any means of making a bad title a good one without doing injustice to persons who may be interested in the land, it would be useful to adopt them.

3. If the effect of the register of title were to make it conclusive as to the rights of all persons, the transfer of land would be thereby facilitated.

4. I should think that the facility would arise from the 1st and 3d causes suggested in this question.

5. To both.

6. I apprehend that this question cannot be answered. The expense of making title to an estate sold for 1,000*l.* may and I doubt not often does exceed like expenses in respect of an estate sold for 20,000*l.*

7. I do not, unless there be in each case a judicial investigation of the title, or something akin to it, as in the Incumbered Estates Court.

8. I think it might as regards the title first registered; but on each transfer or descent of the land an investigation similar to that necessary for the first registration would seem to be requisite, so as to authenticate the title of the new owner.

9. I should say all interests in land should be registered, save tenants leases for twenty-one years or under. As most of the property in the United Kingdom is held on trusts, and subject to equities and charges, I cannot conceive the use of a register which omitted to notice them, unless it were thought proper to enact that land should not be held on uses or trusts, or be subject to charges.

10. In order to ascertain the present state of the title, its past history must be examined and ascertained; and if there were any authentic mode of effecting this in a binding

The Right Hon. A. Brewster.

manner, it might be sufficient to state on the register the present state of the title, which must of necessity exhibit all the incumbrances on the land.

11. It would differ by disclosing the marriages, deaths, and births of persons interested in the land or the incumbrances.

12. I am not sure that I comprehend the point of this quære.

13. In my opinion it would lead to the most mischievous frauds to sanction any register which did not disclose the right of every one entitled to a legal or equitable claim against the lands.

14. As my opinion is that all equities should be disclosed and protected, there would not and ought not to be any personal confidences.

15. I apprehend this might.

16. I think not.

17. I think not.

18. The transfer, without a violation of the first principles of justice, could only be made subject to the rights and equities appearing on the register. I confess that the general project suggested by such a register as these queries contemplate seems to me rather an attempt to limit the powers of the owners of land, which would, I think, ultimately lead to a great diminution in its value.

19. I apprehend that there ought to be no distinction; one right seems as well entitled to protection as another.

20. I think that all interests are alike entitled to protection.

21. The name and address of the claimant would be sufficient for his protection, but not for a useful register of his title.

22. The name and address of the transferee should be substituted for those of the original claimant.

23. It would seem that on each transfer or change of property there must be an investigation similar to that by which the original registration was authorized, limited to the subsequent deduction of title.

24. In my opinion the project of a distringas would in practice be found a very inadequate security, considering how frequently either the trustees or the cestuisque trust will be under disability.

25. I should say that such cases as are referred to in this quære are very numerous; more so, I believe, than any other class of cases which come before the Court of Chancery.

26. I should deem the plan proposed highly objectionable. The power of affixing a charge on land, so as perfectly to secure it for the beneficiaries, seems to me more than a counterpoise to the difficulty thereby created as regards making out title.

27. In my opinion the security of settlements and trusts would be unduly impaired by a plan which would relieve the purchasers of land from the consequences of notice of such incumbrances.

28. I do not consider that a public map would be indispensable, though it certainly would be desirable.

29. This would obviously be necessary, and I fear that for this purpose the public map would soon become unavailable. In Ireland the occupiers of land continually alter the farms on their holdings, so that the Ordnance maps, which so recently contained an accurate picture of the surface of the country, will not now be found to do so. I therefore fear that it would be found impracticable to identify land transferred in small portions by reference to a public map.

30. According to the proposed scheme, the person to decide on the register must have not merely judicial authority; his decision, whether right or wrong, must be final. I doubt the possibility of obtaining machinery adequate to accomplish this plan.

31. Compulsory, if at all.

32, 33. If the register did not make the title unimpeachable (which is my notion of a warranted or parliamentary title), it would be useless. Justice requires that this should not in any case be done until it shall have been satisfactorily ascertained that the title is a good one. How this is to be accomplished practically passes my comprehension. The title to any acre of land in the United Kingdom must be to some extent investigated. The owners must necessarily be the persons to propound their titles. There can be little doubt that those who have defective titles will endeavour to clear them by the registration, and that they will frequently succeed. What is to be done when the defect is detected? Is the registration to be denied, or admitted, with a reservation of rights?

34. I do not consider that any of the circumstances in the 34th quære, save the registry of deeds, can facilitate the projected system. The registry might perhaps afford some security in the investigation of the title.

35. I have not considered the plan referred to in the 35th quære. I believe there were securities in the nature of land debentures granted on the Donegal estate. The issue of that experiment has not been such as to induce a repetition of it. It appears to me that in Ireland it is not expedient to offer any inducement to proprietors to incumber or charge their estates.

36. I can offer no opinion on the 36th quære.

A. Brewster,
Merrion Square, Dublin.

Mr. CHARLES P. BRASSINGTON (Land Surveyor, Dublin).—17*th January* 1855.

Mr. C. P. Brassington.

Dublin, 6, Bachelor's Walk,
17th January 1855.

SIR,

I beg to acknowledge the receipt of your list of questions, relating to the subject of registration of title, as distinguished from a registration of assurances, &c.

And, finding upon careful perusal of those questions that very many, if not the majority, are of a nature calling peculiarly for legal consideration, I would beg to make my answer one of general reference to the subject, in the degree my professional experience and grounds of information enable me to offer any suggestions thereupon.

I have long been alive to the laborious and expensive proceedings necessary in the existing state of things in Ireland to convey an estate with good title, and their detrimental effect in the sale and transfer of lands, and have little doubt that these might be greatly abridged by proper legislation on the subject. And I consider that a title being once clearly manifested before a competent tribunal, and (stripped of its superfluous details) so registered, according to a carefully digested system, in a public registry, with corresponding reference to the Ordnance map of Ireland, need not, in any future dealing with relation to the estate or any part of it, be again deduced, but that a succinct reference to the registry, upon the occurrence of any transaction with regard to the estate, might be effectively substituted. But in such a registry I am of opinion that all valid claims upon an estate should be respected, and that a true claimant should be regarded as a co-proprietor. Of course, in the degree that the cumbrous machinery of trusts, equities, &c. could be safely dispensed with, without damaging true claimants, undoubted benefit would be achieved.

I conceive that a registry of existing deeds might be continued, but rather as a resort of possible reference than an essential or necessary adjunct of the proposed new registry, whose objects of ready sale or transfer would, I conceive, be answered by the primary statement of approved title and future succinct reference thereto.

Constant observation during a long experience has deeply impressed upon me the value of topographical reference in any transaction connected with title to land; in fact it is an invaluable security, not only against confusion, but for clear and accurate identity; and with the comprehensive public resource available in this respect, and a well-digested system of registry referring thereto, the beneficial results with regard to all contracts concerning land cannot be too highly estimated.

The popularity of parliamentary title has been established in a most remarkable manner in the proceedings of the Incumbered Estates Court in this country. Generally speaking, this fact needs no evidence to confirm; but it may not be amiss to state, that I have experienced the influence of sales in that court to be so paramount as to govern me in several instances in which I have been applied to by noblemen and other large landed proprietors to bring their estates to market outside the Incumbered Court, to decline doing so, from thorough conviction of the disadvantage they would have thereby sustained. But I have experienced a still closer test of the public favour the title given by this court enjoys, in sales of the crown estates in Ireland, with which I have for many years had the honour of being intrusted by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues. The brevity and simplicity of the Crown title were heretofore so attractive as to secure on these sales an average of three or four years purchase above the rate produced at any others; but since the popularity of the Incumbered Estates Court title has been established I have found this preference in favour of the Crown estates not only to decline, but, I may say, almost to cease.

With regard to a compulsory registry, though I know the slowness there exists in taking up measures possessing every promise of public benefit, I would not feel warranted in advocating it; and I would hope that compulsion would not, in this instance, be found necessary. I cannot but believe that the advantages of a registry, on the principles I have briefly recapitulated, would manifest themselves generally in the course of a few years; and it is hardly credible those advantages—guarding the proprietors of estates against the casualties of loss and decay of the deeds, documents, and muniments of title, and securing to them the power of showing title with extreme brevity, simplicity, and clearness, and of defining indisputably the boundaries, and extent of their properties, and of dealing with them with commercial facility, in all possible transactions—would not influence all, having the ownership and control of estates, to desire to secure them.

The utility of the Ordnance maps of the North of Ireland, where the survey commenced, was impaired by the survey being at first limited to townlands, and not extending to the subdivisions; as the survey, however, proceeded, this incompleteness became manifest, as even for the public purpose of assessment the important object of ascertaining the value of each farm could only be attained by a survey of the subdivisions, in order to arrive at the amount of the different qualities of land contained therein, and accordingly the omission was supplied in the progress of the survey, which is therefore complete in the southern counties, and will also be in time rendered so in the northern counties as the survey of the subdivisions there is being proceeded with. This will enable landed proprietors throughout Ireland to ascertain, with the aid of properly qualified surveyors, and at a very moderate expense, compared with that of especial measurement, the quantity in each tenant's holding, and thus render this great public undertaking most beneficially available for private purposes.

Mr. C. P. Brassington.

With respect to the question which has been raised as to the utility of this survey for private objects, on the ground of the scale at which it has been laid down in the townland maps, and which has been the subject of much discussion, my opinion is that the scale selected for the townland maps (six inches to a statute mile) is a very judicious one for rural districts; it is sufficiently extensive to define clearly to all intelligent surveyors the boundaries of holdings, to enable them to compute with accuracy their contents, and to produce enlarged maps of them, suited for the objects and use of proprietors of property and their agents. Had, as I believe was suggested, the usual scale of sixteen inches to a mile been adopted, in order to suit the maps to ordinary practical purposes, I feel such a course would have proved a signal failure, for to answer it in its extent, and correspond with the intention, the quantity in each farm and field should have been given, a process that would have entailed enormous additional expense, and from the daily changes necessarily going forward in the subdivisions of farms, and even in farms themselves, prove ultimately worthless, The fact is, the utility of such a survey can only be permanently available through the agency of a competent surveyor, whose aid will always be more or less necessary to ascertain the contents of ever-varying subdivisions; and where he is competent he can accomplish his business with accuracy from the six-inch scale, availing himself of the Ordnance subdivisions where they continue. Those divisions are essential in their primary object for public purposes.

I think it not amiss here to add, with reference to the cost of maps at a scale of sixteen inches to a mile, that the Ordnance sheet maps, being (at their present scale of six inches to a mile) parallelograms of three feet by two feet, embrace an area of 15,360 acres, whereas the same sheet, at sixteen inches to a mile, would contain but 2,160 acres; thus, in addition to the public cost of the production, private individuals requiring the maps would have to pay sevenfold as much as for those of the existing scale; and it appears to me that, for all county or baronial purposes, the maps, from their unwieldy magnitude, would be much less useful, and their aptitude for reference greatly below the others. The value of the Ordnance survey at its present scale has been fully exemplified in the Incumbered Estates Court, where, during the few years' course of its proceedings, maps of a very great portion of Ireland have been produced from that survey at an enlarged scale, showing the area and boundary of each field and farm of the estates brought within its operation, at the trifling cost of threepence per acre to the owners of the properties.

With respect to the scale for towns, the maps at six inches to a mile are quite useless; and I consider a distinct set of maps for towns should be published, at a scale of five feet to a mile. The city of Dublin has been protracted at that scale, and we have thereby the advantage of the most perfect public map for all purposes that has, to my knowledge, been published of any town.

I have the honour, &c.
CHAS. P. BRASSINGTON.

To G. W. Sanders, Esq.,
Secretary, Registration of Title Commission,
32, Abingdon Street, Westminster,
London.

Lieut. Col. T. A. Larcom

Lieut.-Colonel THOMAS ASKEW LARCOM, R.E. (Under Secretary, Dublin).—
18th January 1855.

SIR,

I BEG to return answers to three of the questions transmitted to me; viz., the 28th, 34th, and 36th, being those relating to maps, the branch of the subject with which I am most conversant from my long connexion with the Ordnance Survey, and from having been employed, both during its progress and subsequent to its completion, upon many works which were founded on or facilitated by it.

To Question 28. I think it absolutely necessary that a public registry of land should be connected with a map, because I know no other way in which the boundaries, contents, subdivisions, and other particulars can be identified on the ground, or accurately recovered at a future period; and I think it ought to be a public map, in order that all parties may have equal confidence in it, and that there may be uniformity in the registry; also because a public map is much the best and the cheapest in the end, and the good effects of registry are of public, quite as much as of private benefit.

To Question 34. There is probably no country in Europe in which greater opportunities exist than in Ireland at present for facilitating the sale and transfer of land.

The famine, with its complicated results, has caused the sale of large quantities of land, under the Incumbered Estates Court, as well as by private contract and otherwise—to such an extent, that, under that court alone, about one tenth of the whole surface of the country has changed its owners. To this the title is now clear and simple, and its sale hereafter may be equally simple if proper arrangements are now made.

The introduction of poor laws, the care with which the rates have been collected and watched, the election of guardians by balloting papers, and the visits of relieving officers, with the operations of the Medical Charities Act, and the other local arrangements consequent on the administration of poor laws, have led to a knowledge of detail, in regard to boundaries, properties, holdings, tenures, and liabilities, which but a few years ago could not have been obtained.

Lieut.-Col. T. A. Larcom,

The operation of the Public Works Acts, more especially the drainage, both arterial and for land improvement, has had a similar effect in every county in Ireland, as to the knowledge of boundaries and other liabilities of lands and estates.

The census, which has been taken on the last two occasions with peculiar detail in Ireland, and the annual returns of agricultural produce, furnish the population and production of every townland, indeed of every farm and homestead.

The general Government valuation has made every separate holding a tangible unit, on an uniform and authentic basis of calculation.

Finally, the ordnance survey furnishes an authentic public map, which brings every part of the country in minute detail under the eye, enabling every farm, holding, or field to be at once identified, and referred to by its boundaries in a registry; and there is already a general registry office, which has been more than a century in operation, which is understood to be conducted with much care and ability, and which, with the addition of a topographical branch, would probably realize some of the objects sought to be attained.

It is to be observed, that all the acts and operations above adverted to, with many others, have been carried out with direct reference to the ordnance survey, by which the proprietors in Ireland, and the public generally, have become accustomed to the registry on maps of matters affecting land and territorial liabilities.

To Question 36. The whole of Ireland is surveyed, engraved, and published, in maps on the scale of six inches to the statute mile; and there are plans of the principal towns on an enlarged scale, generally five feet to the mile. These maps were originally constructed for the purpose of affording a basis for an uniform valuation of the whole country, with a view to the adjustment and equalization of the county rates, for which it was at first supposed the townland boundaries would furnish an unit of space sufficiently small. But when the valuation began it was found necessary to exhibit on the maps the subdivision of the townlands into fields.

This was, for the general public, a most valuable change, because it has made the maps available for numerous other purposes. For example, in 1848, the pressure of the poor-rate drew the attention of proprietors to the large area over which the charge was equally spread, by the district called the electoral division, which was the unit of rating.

The Government, on the recommendation of committees of both Houses of Parliament, undertook to reconstruct the whole of the electoral divisions in Ireland, making their boundaries as far as possible the boundaries also of estates; regard being had of course to the area, value, population, &c. of the respective divisions.

But for the existence of the ordnance survey, then recently completed, this would have been impracticable in any moderate time. By the aid of it, however, a property map of the whole kingdom was speedily constructed: and when the necessary statistical information furnished by the census, the classification of the people, the tillage and stock returns, and the authentic Government valuation, had been added to it and tabulated, the most complete status of each district, as to its properties, its population, its poor, and the means of supporting them with the greatest advantage to themselves and the public, was at once available, and the desired object was accomplished. This, in truth, was in a general way a map registry of properties,—a topographical domesday book of Ireland in 1848.

For the like purpose of registering land liabilities on maps, those of the ordnance survey have been used in the distribution and expenditure of the two millions voted for land improvement in Ireland, by loans to proprietors. These loans are generally of small amount, from one hundred, to two and three hundred, and up to several thousands of pounds: the largest I believe 12,000*l.*, but of the larger amount very few. Each of these loans is registered on the ordnance map; the lands to be improved, and the lands liable for repayment being shown, and the actual improvements effected, such as drainage, fencing, clearing, &c., being also delineated. All this has been effected by the care and foresight of Mr. Griffith, who, being familiar with the maps, knew their value, and understood how to use them.

The sales of land under the Incumbered Estates Act have been generally accompanied by maps taken from the ordnance survey, as will be seen by reference to the schedules. I am not aware that the sales, when effected, have been registered on the official copy of the ordnance survey in the office of the commissioners, but it would have been easy to have done so, with any other particulars relating to them, if it had been thought desirable for future reference.

In fact I know no dealings in regard to land to which the ordnance maps may not be made ancillary. When the space is too small to be conveniently shown on the engraved six-inch map, a special enlargement may be made, and attached as a supplementary plan.

I could add many other applications of these maps to land questions, of the same nature, within my own knowledge; and no doubt there are many not known to me, the maps being now in the hands of every proprietor, and constantly used in all land dealings. I have no doubt that the six-inch maps, and the five-foot plans of towns, are quite sufficient for the purposes of registering all ordinary dealings in regard to land, and by periodic, say decennial revisions, such a revision as is now in progress in the northern counties, they may be always kept up to the state of the country, at a comparatively small expense.

The total cost of the ordnance survey of Ireland, from the measurement of the base till the publication of the map of the last county, including all the trigonometrical and astronomical operations, was about 750,000*l.* The preliminary operations began in 1825.

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The maps of the first county were published in 1833, the last in 1846. The area of Ireland, exclusive of rivers and lakes, is somewhat more than twenty millions of acres, making the outlay on surveying about ninepence per acre, a sum probably saved to the country already by the improvements the survey has facilitated or effected.

Dublin, 18th January 1855. THOS A. LARCOM.

G. W. Sanders, Esq.

Mr. JAMES MAJOR, Q.C. (Dublin).—*January 18th*, 1855.

Mr. J. Major, Q.C.

1. THERE can be no doubt that the retrospective investigation of the title on the transfer of land greatly impedes and largely increases the expense of such transfer.

2. I do not think that the disposition is rendered insecure by reason of the want of a registry of the title; but I am of opinion that such disposition would be rendered more secure by such registry.

3. The sale and transfer of land would be facilitated by a register or record of the title to land.

4. By avoiding the investigation of past title, and diminishing the expense of transfer, an increased facility of sale and transfer would be obtained.

5. The vendor would be the party primarily as well as ultimately benefited, the expense of transfer being imposed on him, unless he be exempt by special contract.

6. This will depend on the circumstances of each particular case.

7. I think it is practicable to form such registry, but I do not think a registry of deeds would be inconsistent with a registry of title.

8. The register of title would be instrumental in simplifying the title to lands, as it would dispense with the lengthened form of conveyance and the recitals therein contained; provided the evidence of such title was a certificate of the nature contemplated.

9. In my opinion equitable as well as legal estates should be put upon the register; and I do not understand any difficulty in applying a certificate as the evidence of title to the one as well as the other.

10. I think the present and existing title is all that should be exhibited; the certificate should be conclusive, and exclude all retrospective inquiry.

11. If the register disclosed the deduction of title, it would not, as I understand it, differ from a registry of assurance.

12.–15. In my answer to 9, I think trusts and equities intended to affect the registered owner may be protected on the register consistently with the contemplated objects.

16. The existing system as well as form of settlements must necessarily be changed and modified, so as to adopt them to the proposed form and objects of registration.

17.–24. All these queries involve details and official forms and rules, which should be left to the tribunal constituted for the purposes of this Act. The adoption of a plan of affording notice to all parties with interests legal or equitable appearing on the register, recording the service of the same prior to transfer or granting a new certificate, would appear to me the simplest, as well as safest.

25. Considering the many opportunities afforded for the committal of breaches of trusts, the instances are neither frequent or numerous.

26. I do not think that any difficulty or consequent injury is to be apprehended from the adoption of such a plan.

27. I do not think that the security of settlements would be unduly or at all impaired if proper precautions are adopted by notice or otherwise, as is above suggested.

28. I think it would be quite necessary that there should be such maps.

29. It would be indispensable to the registry of the title, that the registrar should ascertain the accuracy of the description and the identity of the land.

30. It would be quite necessary to invest the chief registrar with judicial authority for all purposes connected with the completion and perfection of registration, and for establishing its finality; with an appeal to a superior tribunal on all questions, except those purely practical.

31. For the purposes of conferring title the registration should be compulsory.

32. Registration should confer a warranted or parliamentary title. Claimants and the nature of their rights would be ascertained by notice, as is now done in the Incumbered Estates Court.

33. The title should be considered as conferred by and originating with the proposed certificate. No power of investigating any antecedent title should be reserved, nor no right dependent on lapse of time or otherwise be considered necessary.

34.–36. I can only, in answer to these questions, say that the existing registry of deeds, the complete and invaluable Ordnance survey, public valuations, and the machinery of the Incumbered Estates Act, each and all, afford machinery and possess advantages which may be made available for the introduction of a permanent system to facilitate the sale and transfer of land.

Mr. WILLIAM BOOTH, C.B. (Ordnance Office, Dublin).—Received 19*th January* 1855.

Mr. W. Booth, C.B.

As I have not the advantage of belonging to the legal profession, I shall not answer *seriatim* the various questions submitted by the commissioners, but shall offer such observations as occur to me in regard to the object of their inquiries, namely, to consider the subject of the Registration of Title, with reference to facilitating the sale and transfer

of land, and the advantages or disadvantages of a simple system. My observations, *Mr. W. Booth, C.B.*
though applicable, perhaps, to other countries, shall be confined to Ireland, where, for the last thirty years, I have held in the Ordnance Department a public office, the duties of which have continually placed me in immediate relation with those branches of the Irish Executive concerned in supporting the civil power in its efforts to maintain the peace of the country.

Committees and commissions, composed of men of capacity and experience of all parties, have, over and over again, patiently and ably investigated the causes of the distresses, difficulties, and misfortunes peculiar to Ireland, and there has been an almost general concurrence of opinion in their numerous reports, as also in the writings of other able men, including those in the periodical press of the whole kingdom, that the system of transfer of land requires simplification and amendment. The whole subject has, in short, been so exhausted in these publications, (the best of which are doubtless well known to the Commissioners,) that it is scarcely possible to suggest an idea upon it which has not been clearly expressed before.

Simple absolute ownership of land is the condition most favourable to its improvement; but, nearly up to the present time, such ownership has been very limited in Ireland. The land has been almost wholly held by tenants for life, often liable to the payment of heavy annual charges for incumbrances, or by men holding under such circumstances of tenure as deprived them of that stimulus to the expenditure of labour and capital which accompanies a full ownership of land. The personal interest of the absolute owner is, that his land shall become as valuable in every respect as he can make it; that of the mere life annuitant, or of the man having any other limited interest in it, is merely that his own rent shall be as high as can be obtained. Although, in practice, some men may not act in accordance with their personal interests, yet the experience of all times shows it is the usual governing principle of mankind, and this is fully exemplified in the generally poor condition of real property in Ireland.

The general absence of that personal interest incident to unfettered ownership led to the growth of a state of society in Ireland which has been most deplorable. Millions of the public money have been lavishly squandered in the vain endeavour to put down evils which would have had no existence under a better state of the laws of property; disturbances and insurrections, with all their attendant misfortunes and crimes, have, until very recently, for a century past existed in Ireland as a chronic disease—clearly traceable, in my opinion, to the anomalous state of ownership and tenure of land Who can look back to those times without pain and shame, or without an earnest desire to do all that is possible to avert similar afflictions in future?

Incumbrances and family settlements being contingencies that usually accompany the ownership of property, there should, where they apply to land (on the right use of which depend both the internal wealth and external security of the country, as well as the subsistence of the people), always exist some easy and simple means to counteract any attendant mischiefs, and to prevent settlements or charges upon land from oppressing it with evils of long endurance. For example: leases of large tracts of land, made at rents in perpetuity or for long terms, are often most injurious and embarrassing; because such leases may, and often do, prevent beneficial subdivision for buildings or other objects, all and every portion of the land being liable to the rent reserved in the original lease. One seventh portion of the surface of Ireland was said to have been held under this description of tenure. No prudent man likes to put himself in the situation of being liable to pay rent properly payable by other men; or, in order to secure himself from it, to be a party to troublesome indemnities and probable legal proceedings. Men should not be subject to waste their time and money in such matters, which are so evidently obstructive to their private interests, as well as to the public welfare.

So many difficulties beset the man who has any dealings with land, that some persons erroneously believe they were contrived expressly to deter men from becoming the owners of real property. There could not have arisen such universal dissatisfaction with the existing laws relative to the transfer of land, or such general approbation of that most salutary measure, the Act to facilitate the Sale of Incumbered Estates, unless the evils of the ordinary system had become almost intolerable.

The people of Ireland of the inferior classes are very shrewd and intelligent. I have often heard men of that class make use of a common saying, "A pennyworth of land, —a pound's worth of law." Since the passing of the Incumbered Estates Act another expression has become common: "It is the best thing ever done for Ireland." These homely phrases convey, I believe, the sentiments of all classes in Ireland, upon the past and the present state of things with regard to land, and are echoed in nearly every newspaper in Ireland.

It would therefore seem highly advisable and necessary that a system, in accordance with the wants, feelings, and habits of business of the present times should be permanently established. A good system to facilitate the free transfer of land would be truly conservative in its character. As an Englishman, having always held Conservative opinions, and feeling a strong interest for the future welfare of Ireland, I should rejoice at its introduction. It would add materially to the wealth of the country, as well as to its population; not that population of dissatisfied paupers which has been the natural produce

Mr. W. Booth, C.B.

of the past land system, but one of industrious, comfortable, and well-affected men, having an interest in cultivating and defending their own soil.

Free trade is now established in the produce of the land. Facilities for dealings in the land itself seem absolutely necessary to encourage the outlay of capital upon it, and thus draw out its resources; so that we may fairly compete with the lands of other countries.

No man can travel in Ireland without being struck by the general want of proper farm buildings, or without observing the too frequent inferior cultivation of good land. The miserable dwellings of the cultivators of the soil, the wretched villages, and sometimes towns also, in situations where better should naturally exist, are painful evidences of some withering influences, arising from those difficulties to transfer or acquire any permanent ownership in the land, which have long paralyzed industry and improvement.

I have been nearly fifty years in the public service, and have served in several countries, in each of which I have given much attention to matters connected with the tenure and transfer of land, but especially in Spain and in Ireland.

Six years of my earlier life were passed in Spain; difficulties of a similar character in regard to land had long existed there; and it was the conviction of the most eminent Spanish statesmen that these difficulties were the chief cause of the internal decay and misfortunes of that country, ultimately plunging it into a violent social revolution. I was led to take a particular interest in this subject in Spain, having been intrusted by the great Duke of Wellington with some affairs connected with land in that country.

It was melancholy to observe in Spain the effect of bad laws with respect to the soil, in its wretched cultivation, in the miserable dwellings, both of town and country, and in a poverty-stricken population. But nowhere in Spain, except perhaps the worst parts of Gallicia, did I ever see anything approaching to the miseries I have observed in the peasantry of Ireland. It was to the laws affecting land in Spain that I always attributed its decline and weakness in modern times; for I am convinced that no country, having a fruitful soil and healthy climate, can ever retrograde if its land laws are framed for the general good.

Those who have most deeply considered the whole subject are the most firmly convinced that the permanent prosperity of this part of the United Kingdom depends on the adoption of some prudent, safe, and simple plan whereby land can be easily transferred from man to man on unquestionable title. In common with many others who have so employed their thoughts, I believe that a simple registration of titles, under the control of a proper land court, would be a great step towards the establishment of a good system. There can be no doubt that Ireland, by means of its existing registry of deeds, its complete Ordnance survey, and uniform public valuation, and the machinery formed under the Incumbered Estates Act, possesses obvious facilities for the introduction of some permanent system to facilitate the sale and transfer of land.

Since the receipt of these questions, I have procured and attentively studied the bill introduced into Parliament by Mr. Vincent Scully. He has done more than any other man to bring this great subject before Parliament, and the public, in such a form as to facilitate (I would hope) practical legislation on it. He deserves the warm thanks of those who are earnest in their wishes for the permanent improvement of Ireland; for a tribunal such as he proposes to establish, which should be devoted exclusively to the affairs of land, with the object of giving every prudent facility for its transfer, and for effecting moderate charges upon it in the way most beneficial to its owner and at the same time least hurtful to the community, would be a most valuable institution in any country.

A land tribunal possessing permanently the power of the Incumbered Estates Court, such powers extending to all land whether incumbered or not, and having the great advantage of being separate and distinct from all complications of other courts of equity, would gradually set free the springs of industry in Ireland. Dealings and other affairs relating to land would then be exclusively attended to in their own proper and separate department, unfettered by tedious and expensive forms.

I feel confident that the establishment of such a tribunal would be of vast benefit to the country, and would prove most satisfactory to the public, among whom a feeling has been growing and strengthening against the barbarous and expensive manner in which legal affairs, particularly as regards the transfer of land, have been managed, but which the requirements of the present times and intelligence of the people will not much longer endure. All the troubles and disorders of Ireland, which, until within the last four or five years, were so embarrassing to the entire kingdom, may I think be directly traced to the wretched system of society produced by the difficulties attending the transfer of land.

My interest in the valuable labours of the pending commission is confined to the strong wish I have to see a foundation laid for the permanent improvement of the country, to benefit our children; and that they at least may be spared the pain, which the present and former generations have suffered in knowing, that Ireland, from the state of the laws affecting real property and the difficulty of transfer, has always been, and still is, notwithstanding its many natural advantages, one of the least improved countries in Europe.

WILLIAM BOOTH, C.B.

Ordnance Office, Dublin, January 10th, 1855.

Mr. W. Booth, C.B.

Sir, Ordnance Office, Dublin, March 5, 1855.

In reference to my letter to you of the 18th January last, and the paper of observations therein enclosed, I hope I may be permitted to state the following facts for the information of the Register of Title Commissioners.

In the month of June last a small interest in land was put up for sale in one of the Master's offices of the Court of Chancery in Ireland. As the land adjoins a farm belonging to me, I was reluctantly led to buy it, having very natural objections against any dealings for property passing through the Court of Chancery. However it was knocked down to me as the highest bidder for 325*l.*

My attorney is an active man, and considered moderate in his charges.

With all his activity, it required eight months to obtain the title, which is said to be very short and simple. His bill of costs for this service amounted to 55*l.* 10*s.* 5*d.*, being more than 17 per cent. on the purchase money.

He has furnished me with the papers and parchments relative to the title, which I have caused to be accurately weighed. They weigh exactly 22 lbs. 2½ oz. They fill a box 1 foot 11 inches long, 1 foot 4 inches deep, and 1 foot 4 inches in breadth; and I think there is as much writing in them as would occupy about three months' hard reading if any person would attempt such a task. Though I am the purchaser of the land, and most interested in those papers, they are as unintelligible to me as if they were written in the Chinese language.

Can such a system of transferring land be continued in a county like this in the present state of society?

I have, &c.,

G. W. Sanders, Esq. William Booth, C.B.

Mr. M. Longfield, Q.C.

Mr. M. Longfield, Q.C. (Incumbered Estates Commissioner, Dublin).
19*th January* 1855.

1. It seems certain that the transfer of land is impeded, and rendered more expensive than it ought to be, by the necessity which now exists for the retrospective investigation of the title on each successive transfer.

3. I think the sale and transfer of land might be much facilitated by a public registry of the title to land.

4. The increased facility would be obtained by avoiding the frequent investigation of title, and by making the buyer more secure.

5. I think the diminution of expense would be a saving to the seller chiefly.

6. I cannot state what is the average proportion. It is subject to great variations, according to the magnitude of the estate and the nature of the title.

7. I think it is *practicable* to form a registry of title, as distinguished from a registry of assurances; but it would be a work of extreme difficulty, owing chiefly to the difficulty of getting competent persons to carry the system into execution.

8. A registry of title might simplify the title to land and the forms of conveyance, by making the registered owner competent to convey an indefeasible title, like the owner of a share in a joint stock company.

9. I think no title should be put upon the register except the absolute title to a fee or to a lease.

10. I think the present actual state of the title should alone be put on the register. One retrospective inquiry only would then suffice as the basis of all future transactions.

11. I think there would not be any difference, if the purchaser is to be bound by the previous history. On the other hand, such history seems useless if it does not bind the purchaser.

12, 13, 14. It seems to be essential to a perfect register of title, that nothing but absolute ownerships should appear on it, and that all other interests should be of the nature of personal confidences merely. If they are placed upon the registry all the advantages of a registry of title are lost, and it becomes an imperfect registry of assurances.

15, 16. If trusts and limitations are to continue to affect the land, and to become part of the title, I think the registry of titles would be useless, or at least not worth the danger and difficulty attendant upon the introduction of a new system.

17 to 23. I think any system of distringas, &c. would be insufficient as a protection, and would lead to litigation and expense. If a special caveat must be put in by each person, it will only protect the active, who are pretty safe under any system; but it would not afford due protection to minors, married women, unborn children entitled in remainder, &c. On the other hand, if you permit a general caveat to be entered to protect all interests under a certain instrument, it comes back to a bad system of registry of assurances. The custom would soon grow up of making a caveat almost a part of the registration. I think a caveat should be permitted only when the caveator has good ground to apprehend a breach of trust, and seeks a removal of the trustees. Then, pending an application for the removal of the trustees, let a caveat be entered by the authority of a judge, and removed when the cause is determined.

24. I think a protection amply sufficient for all equitable interests in land against improper alienations by trustees may be provided, by permitting land to be registered in the names of three trustees, with a short note, (the words "no survivorship" would suffice,) to intimate that the "jus accrescendi" was not to apply to the case. The effect of this should be, to make any alienation by a surviving trustee void, so that when a trustee died no alienation could

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be made until his place was filled up, and the property duly registered in the names of the new trustees.

25. I think trustees are more sinned against than sinning. There are more instances of their being punished for constructive breaches of trust committed through ignorance or good nature than of their gaining anything by a fraudulent misapplication of the assets committed to their charge. When a fraud is committed it is generally by a sole or surviving trustee, who yields to the temptation of raising money for his wants or speculations at a low rate of interest, without expense or delay, or exposure of his affairs, by selling out some of the trust funds, which he, perhaps, intends to replace when his affairs are more settled. The intended restitution is, perhaps, made, and the fraudulent trustee escapes detection, and the beneficiary loses nothing. Sometimes, however, the trustee runs away, or becomes insolvent, and the beneficiary loses all. I do not think any such breaches of trust would be likely to occur in the case of land. The low rate of interest obtained by an investment in the funds leads to a great pressure on the trustee to consent to some application of the trust funds, in which the immediate interest of the tenant for life is consulted at the risk of the persons entitled after his decease. I conceive that such a misapplication in the case of land would never take place. All parties would at once see the glaring impropriety and injustice of the transaction. On the other hand, when I see the preliminaries necessary to the sale of land as compared with the sale of stock, the expense, the delay, the publicity, the certainty of immediate detection, the probability of a suspicion anticipating the transaction and defeating it, all conspire to make the case of a sale by fraudulent trustees so improbable that it may be safely left out of our consideration altogether.

26 and 27. My opinion on these questions is stated in my answers to questions 24 and 25.

28. I do not think that a public map would be necessary, either for insuring accuracy or for the security of purchasers. It might be useful, but as coupled with a parliamentary title it would not be free from danger.

29. No. The purchaser must see to the identity of the land. The registrar must take care that the vendor does not convey any property of which he was not the registered owner.

30. I think the registrar should have judicial authority to permit or to refuse, or to annul or to amend the registration of title, and to enter and to remove caveats against alienation, and to remove and appoint trustees.

31. I would make it voluntary in the first instance, except in the case of sales under the authority of a court of equity, in which case the registration might be compulsory. At some future period it might be practicable to make it compulsory in all cases. If the registration were to be now made compulsory it would be impossible to procure a sufficient and competent staff of officers to carry the law into effect.

31 and 32. If the registration is not to warrant the antecedent title, it might, perhaps, be of some use to posterity but of no use to the present generation. The great difficulty and danger is the ascertainment of the rights at the outset. I think the danger of fraudulent alienations by trustees registered as owners is very light indeed; but I see very great danger that titles may be wrongly placed upon the registry in the first instance. To prevent this the abstract of titles should be duly verified and carefully investigated, notices served on all parties connected with the estate, and published in the newspapers, and full opportunity given to all parties to make objections if they can. This will be a matter of expense and delay, and will require skill and diligence on the part of the registrar, or rather registrars, for one registrar, with assistant clerks, would be altogether unequal to the task. I consider this the chief difficulty in the proposed system, and no trifling source of danger. The questions are chiefly directed to the mischiefs and frauds that may arise after a title is placed upon the registry I think such frauds may be reduced to a trifling amount by due diligence. But the difficulty will be incomparably greater of preventing the fraud of placing a wrong title on the register.

34. I think Ireland does possess considerable advantages for the introduction of a permanent system for the sale and transfer of land, by reason of its existing registry of deeds, its excellent Survey and public valuation, the fact that every townland has a recognized public name by which it is universally known, and by the operations of the Incumbered Estates Act, a conveyance from which operates as a registration of title.

35. I think a plan of land debentures might be readily framed, by which the owners of land would be able to borrow money readily at low interest, on securities approved of by the Court, and the owners of money would be enabled to lend it with safety. These debentures might be transferred either by simple delivery, or by entry in a book like stock, according to the conditions specified in them, and the greatest facilities should be given for the recovery of the sums due upon them. They should be real estate when in the possession of a person having an estate of inheritance in the land charged therewith, but they should not merge in the estate by operation of law. I give this example to explain its working: A.B. buys an estate for 20,000*l.* in the Incumbered Estates Court. Instead of taking an absolute conveyance, he takes it subject to 10,000*l.* charged by debentures, and at the same time receives debentures to that amount in such sums as he may think convenient. He may thus obtain money to pay for the estate, or he may keep the debentures himself, in which case he would have an unincumbered estate, which would descend unincumbered to his heir. If he wants money at any time, he can obtain it in a few days by a sale of some debentures, as readily as by a sale of railway shares, and without any exposure of his affairs. Again, in marriage settlements, &c. all the

charges for younger children, &c. would be effected by a transfer of debentures to trustees, and thus the title to the estate would be kept short and clear. Every one who has experience in Irish titles knows how much the expense of the abstract and the labour of investigation are caused by the devolution of incumbrances. For one deed relating to the estate there are generally two relating to the incumbrances, and all these appear on the registry. *Mr. M. Longfield, Q.C.*

Another operation of the debenture system would be this: C.D. has a small sum, say 200*l.*, to lend. He goes to a broker, and purchases a debenture to the amount, which is equivalent to a first mortgage, in which the title and value have been carefully and impartially investigated. What a contrast to this is presented by the manner in which small loans are conducted,—in which the borrower is ruined by the enormous price he has to pay for the loan, (in costs, douceurs, &c.,) and the lender, by the insufficiency of his security or the difficulty of realizing it. I may add, that a system of land debentures is more called for in Ireland than in England, as, in consequence of the registry acts, the deposit of title deeds is of little value, and money cannot be safely lent without an investigation of title, and searches, and a mortgage, duly registered, remaining as a permanent public record of the transaction.

M. Longfield.

6, Fitzwilliam Square, West,
Dublin, Ireland.

Mr. Robert Wm. White (Land Surveyor, Spring Mount, Cashel).—19*th January* 1855. *Mr. R. W. White.*

Not being a lawyer, I shall not attempt to give any answer in regard to mere legal matters, but shall confine myself to those questions which involve only a practical knowledge of dealings with land in Ireland. During all my life I have been connected with land, and for many years past have had a very extended intercourse with owners and occupiers in many districts.

No person not a lawyer can, I conceive, entertain any reasonable doubt that the sale of land is very greatly impeded, and rendered much more expensive than it ought to be, by the necessity for a remote investigation of complicated title on each successive transfer. Increased facilities of transfer, and greater security of title, would be advantageous to both buyer and seller, but especially to the latter, by a saving of expense and an increased price.

That Ireland now possesses many and great advantages for the introduction of some permanent system to facilitate the free transfer of its land will not be denied by any man practically acquainted with the country.

The Office for the General Registry of Deeds contains much accurate information in regard to every property in the kingdom, and might be rendered available for a more simple system.

The operations of the Incumbered Estates Act have, within the last five years, transferred speedily and securely large quantities of Irish land, and thereby familiarized the minds of sellers and purchasers with some of the many benefits that accompany quick sales and safe titles.

The trigonometrical survey of Ireland, completed by engineer officers of the Ordnance department under the superintendence of Colonel Larcom (now the under-secretary), stands, I believe, unrivalled for accuracy of detail and perfection of finish.

And the uniform public valuation in the course of being made by Mr. Griffith, subject to periodical revision according to a fixed standard of prices, will, when completed, supply a detailed statement of the value, both positive and relative, of every townland, tenement, and building in the whole country.

The machinery of the Poor Law system, now in active operation throughout Ireland, has also aided in defining the boundaries and testing the value of holdings.

These various advantages over other countries give to Ireland peculiar facilities for introducing some simple system of land transfer, based on a Parliamentary title and upon a Government survey and valuation, which combine, or are capable of combining, perfect accuracy of boundary with approximate value.

The Ordnance Survey of Ireland, though not conclusive as to boundaries in law nor invariably accurate in fact, could, I feel certain, easily be made both the one and the other. I have repeatedly had occasion to test practically its correctness and utility in the various avocations upon which I have been occupied during the last twelve years, extending over thirteen counties of Ireland: first, under the Poor Law Board; next, under the Commissioner of General Valuation, in checking and correcting values of lands; and thirdly, under the Great Southern and Western and eight other railway companies, on the valuation and purchase of various interests in the numerous lots of ground required for upwards of 230 miles of railway. On all three classes of engagements my calculations and arrangements were based on the Ordnance maps. Under the Poor Law Board each townland and tenement required to be accurately and clearly defined for the special purposes of local taxation. In the general valuation the identity and acreable contents of the different holdings were all checked and controlled. For railway purposes, where the greatest minuteness is required, our maps, identifications, and estimates, based on the Ordnance Survey, were, with ordinary care, made almost

Mr. R. W. White.

indisputably correct. From all this experience I consider that, with the agency of the Ordnance Survey, the identity of property can be clearly ascertained and defined.

On the Public Valuation of Ireland I have been engaged, under Mr. Griffith, in checking and correcting it in its progress to completion; and latterly have had very extended opportunities of testing its correctness as a standard of the annual letting value of Irish land. It is fair and uniform; and any charge on property to the extent of ten times that valuation would, in my judgment, be as eligible an investment as could be desired.

During my long and intimate intercourse with many Irish landowners and incumbrancers, their feelings and interests have been continually before my mind; and I am strongly of opinion that those classes particularly, and the whole country generally, suffer severely through the present complicated and inconvenient modes of incumbering land.

The delays and difficulties of realizing money secured upon land deter prudent capitalists, especially those of the commercial classes, from investing their funds upon landed securities; and the impossibility of discharging a large debt, in one lump sum, except through ruinous proceedings for a sale of the property, prevents prudent landowners from raising money by incumbering their estates where loans would be a positive advantage. A well-regulated system of land debentures, such as was proposed in this country and anxiously sought for by its landowners some years ago, would effectually obviate both these objections.

Such debentures should, however, bear the impress of a fair marketable value; which, by limiting them to ten times the annual value of the property they represent, would leave no doubt on the matter. They should be easy of transfer as well as of recovery, and payable with principal and interest to the holder through some public department. These conditions being fulfilled, credit would be placed on the best and surest foundation within due limits. Such securities would afford to the monied man a safe and convertible investment for his savings, to the landowner a bank of deposit on which he could conveniently draw at pleasure, and would tend to establish a substantial proprietary.

19th January 1855.

ROBT. WM. WHITE,
Spring Mount, Cashel.

Mr. J. B. Murphy.

MR. JOHN B. MURPHY (Barrister, Dublin).—20*th January* 1855.

1. I CERTAINLY think the necessity that exists for the retrospective investigation of title on the occasion of each successive sale of land, does impede the transfer, and renders it more expensive than it ought to be.

2. Replying from my experience as a conveyancing barrister during fourteen years, I am of opinion that, notwithstanding the existence in Ireland, for nearly a century and a half, of a registry of assurances, the disposition of land in this country, is in most cases seriously impeded, and in numerous instances rendered insecure, by reason of the want of a registry of title. The expenses and delays incident to a complete registry search, and to the inquiries and investigations which may become necessary or advisable in consequence of the person making the search being thereby affected with notice of assurances appearing thereon, frequently oblige parties in Ireland to dispense with the security of a complete registry search. These considerations have often rendered it practically impossible to make out a clearly good title to properties of small value.

3. I am confident that the sale and transfer of land would be facilitated by establishing (under proper regulation and control) a public register or record of the title to land.

4. Such increased facility of sale and transfer would, in my opinion, be obtained by avoiding the investigation of the past title, by diminishing the expense and delay of transfer, and by making the buyer more safe and secure.

5. I can scarcely suppose a case in which the diminution of the expense would not be a saving to the seller; and I think that, inmost cases, it would be a saving to both buyer and seller. The diminution of expense and increased facility of transfer would greatly enhance the selling value.

6. It does not appear to me that there exist available *data* for calculating with accuracy, what proportion of the expense of a purchase of land may, upon an average, be taken to arise from the investigation of, and inquiries into the title and matters connected therewith, as the proportion in each case must vary according to the nature and history of the title, and other circumstances; but my feeling is, that (exclusive of the stamp duties on conveyances) the average proportion exceeds, in Ireland, ninety per cent. on the entire expense of the transfer.

7. The subject matter of this question has for several years been much considered by me, and I am quite satisfied it is perfectly practicable to form a register of title to land, as distinguished from a register of the assurances under which the title has been derived, and as distinguished from a register of incumbrances affecting the land.

8. Were the register made conclusive proof of title, the transfer of the registered title might be effected by a simple entry on the register, and a conveyance would be unnecessary.

9. If a register of title were established, I think that, upon the first entry of land in such register, a statement of the several estates and interests then affecting the land should be set forth on the register, but that subsequently no form of ownership or

property, beside the fee simple, should be put upon the register, except tenants leases, and debentures of the kind mentioned in my reply to the 35th question. *Mr. J. B. Murphy.*

10. I think it essential to the purposes in view to adopt the principle of exhibiting only the present actual and existing title, without the history or past deduction of it, and to make the register conclusive evidence of the title appearing thereon. In this way, and no other, a retrospective inquiry into the former dealings and transactions may, I conceive, be avoided.

11. If the register (without being made conclusive evidence of title) should disclose the deduction and history of the title, it would not, I think, substantially differ from a register of assurances, except by setting forth some additional facts, not the subject matters of assurances, such as marriages, births, deaths, descents, and like matters of pedigree, &c.

12 and 13. I think it essential to a practicable system of registration of title, that all forms of ownership (except those admissible on the register of title, as specified in my reply to the 9th question) should be of the nature of personal trusts only, and should not in any way bind or affect the title of the registered owner.

14. My opinion is, that it is not necessary or desirable, that equities or trusts (except such existing interests as are comprised in my answer to the 9th question) should, by way of personal confidence, or otherwise, be permitted to affect the free transfer of land. The objects of equitable estates and interests in connexion with land, may (for all useful purposes) be, I think, effectually attained by a proper system of transferable debentures of the kind referred to in my answer to the 35th question. Settlements of land might nevertheless be also effectuated through personal confidences, like settlements of stock or railway shares.

15. I have given the subject matter of this question much consideration during past years, and have never been able to arrive at any other conclusion respecting it than the following; namely, that, consistently with an useful system of registry for the purpose of the free, economical, and ready transfer of land, trusts and equities intended to affect the registered owner, cannot be protected on the registry itself so as to prevent the registered owner from transferring the land while such protection should exist, or from transferring it otherwise than subject to the protected interests.

16. I think that, consistently with the principle of a simple register of title, the existing system of settlements by which the limitations and trusts of the settlement modify and become part of the title might be continued, provided that those limitations and trusts shall be enforceable only as confidences against the registered owner personally, and shall not be allowed to confer any right against the land itself. But I think also that the recognition of such limitations and trusts, even in the shape of mere personal confidences, is calculated to interfere with the principle of the free transfer of land.

17 and 18. I am decidedly of opinion, that settlements, trusts, and equities would not be adequately protected by allowing the parties interested under them, or others, to put a distringas, caveat, stop or upon the register, or to take some other proceeding in the registry office of a similar nature, unless such an effect be given to the distringas, caveat, or stop, as would in most cases increase the existing impediments to the free transfer of land.

A system of distringas, caveat, or stop must, I conceive, be carried out in either of two modes,—viz., either by prohibiting the transfer of land so long as the distringas, caveat, or stop affecting it, shall appear on the register, or by permitting the transfer subject to such distringas, caveat, or stop.

The removal or cancellation of the distringas, caveat, or stop, for the purpose of the first-mentioned plan, can only be effected either, firstly, by requiring the institution of a suit at law or in chancery, or some similar proceeding on the part of the registered owner, against the person or persons interested in the estate or interest intended to be protected by the distringas, caveat, or stop, in which case each transfer of land thus clogged, will involve a preliminary litigation; or, secondly, by requiring the service or publication in some manner or other, of a notice to the effect, that if cause be not shown to the contrary within some limited time, the land will be transferred discharged from the distringas, caveat, or stop; in which event it will probably often happen, that during the minority of the parties interested in the estate or interest intended to be protected by the distringas, caveat, or stop, or by reason of their absence, or of the negligence of trustees, or by mere accident, or by some one or more of these, or other causes, which may be readily suggested, the notice may not reach the proper parties, or may not be attended to in due time, and the protection of the distringas, caveat, or stop be thus lost.

If, on the other hand, a transfer of land shall be permitted, subject to any distringas, caveat, or stop which may appear on the register, I conceive that few (if any) persons will become purchasers for valuable consideration of the land, unless the estate or interest intended to be protected by such distringas, caveat, or stop, shall be fully disclosed on the register, and if this be done, the register of title will in the course of time become substantially complicated into a register of assurances. The system of distringas, caveat, or stop, will, moreover, in any of the foregoing views, afford opportunities to persons unfairly disposed, to obstruct the transfer of land, by entering, without due

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grounds, a distringas, *et cetera*, on the register. And though the improper entry without due or reasonable grounds of a distringas, caveat, or stop, might be made an indictable offence or be otherwise punishable, these penalties would fail in many instances to be applicable. In numerous cases of this kind, the real owner of the land would, I think, find it more advisable to buy off the person claiming under the distringas, *et cetera*, rather than engage in litigation with him: and in the case of settlements and wills, containing limitations to numerous parties, any one of whom (no matter how remote or trivial his interest) might enter a distringas, caveat, or stop, the owner of the land could thus (particularly when dealing with paupers) be well mulcted.

19 to 23. Opposed as I am to the system of distringas, caveat, or stop, I cannot suggest any useful answers to any of these questions.

24. I am unable to suggest any mode for the effectual protection of equitable interests and trusts against the improper alienation of the registered owner, unless by way of distringas, *et cetera*, which (as stated in my reply to the 17th and 18th questions would, in order to be effective as a protection to such interests and trusts, increase, rather than diminish the existing impediments to the free transfer of land. But I think that, were the register of title placed (as I am of opinion it should be) under the immediate and direct control and management of a tribunal possessing judicial powers, very considerable protection to equitable estates and trusts might be afforded, by permitting the tribunal (in its equitable discretion, and having regard to the primary objects of a register of title,) to take cognizance of them as mere personal confidences in no way conferring any right as against the land itself.

25. So far as I can judge from personal or professional experience, I do not consider the instances of misappropriation or misdealing by trustees of stock or money, involving loss to their beneficiaries, frequent or numerous, as compared with the instances to the contrary.

26. But notwithstanding the impression expressed in the last answer, I think that for the reasons assigned in my reply to the 17th and 18th questions, the plan suggested in this 26th question is objectionable. I think, at the same time, that, without interfering with the principle of a simple register of title, settlements and trusts might in most cases be adequately protected, as *mere personal* confidences, by (for instance) registering the ownership of the fee in the names of three or more trustees, and by a legislative enactment depriving (in such cases) the survivors or survivor of the trustees, of the power of transfer of the land, without the concurrence, either of the representatives or representative of the deceased trustees or trustee, or of the parties beneficially interested, or by enabling the registrar, in such cases, to insist on the lodgment in Bank of the purchase money, and by vesting in him due powers for its investment, and application for the benefit of the parties beneficially entitled.

27. I beg to refer to my replies to the 16th, 17th, and 18th questions.

28. I am of opinion that for the purposes mentioned in this question it would be necessary to couple the registry of title with a public map.

29. If the title to be given be (as I think it should be) a parliamentary or warranted title, it would be indispensable to the due registry of the title that the registrar should ascertain the description and the identity of the land; but this I think would be a matter of ready accomplishment under a proper system, and with the aid of proper public maps.

30. In my opinion one or more of the principal functionaries of the registry office, should have judicial powers similar to those possessed by the Incumbered Estates Court in Ireland. It appears to me that such powers are essential for the purpose of a proper registry of title; but there ought, I conceive, to be an appellate jurisdiction vested, under proper restrictions, in some superior tribunal.

31. My impression is, that the system of registration of title should not be compulsory in the first instance; but that as to land once voluntarily put on the register, the subsequent registration of title should be compulsory. By not making the original registration of title compulsory, the gradual adoption (if it shall take place) of the system will be, so far, a test of its usefulness and suitableness to the condition and wishes of the country, whilst its non-adoption would render it innocuous. I am aware that objections have been suggested as to possible inconvenience from the co-existence of the present land system and the new system, but it does not occur to me that any substantial difficulties would result.

32 and 33. I think that the registration should at the outset, confer a warranted or parliamentary title, and that this might be effected by vesting in one or more of the chief functionaries of the registry office powers for the ascertainment of title, &c., similar to those now exercised by the Incumbered Estates Court in Ireland.

To limit the registry to the title subsequent to its commencement, and leave the antecedent title (as now) a subject of investigation, would in a great measure deprive the present generation of the benefit of the improved system.

34. The existing and long established registry of deeds in Ireland, appears to me to afford peculiar facilities, for ascertaining satisfactorily the existing titles to, and interests in land in this country, which facilities might, of course, be increased by the application for that purpose of the machinery of the Incumbered Estates Act; whilst the complete Ordnance survey and uniform public valuation would, I think, be found to

Mr. J. B. Murphy.

supply nearly all the remaining requisites for the establishment of a permanent system to facilitate the transfer of land in Ireland.

35. I have given the subject of land debentures much consideration since the time (some years ago) when Mr. Vincent Scully first published his views respecting them.

It appears to me that a system of land debentures of the kind proposed by him, and limited in amount, as he suggests, will be found to be an essential part of any practicable system for the registration of title. These debentures may, without embarrassing the registry of title, be made the subjects of settlement, and will supply all the useful purposes of settlements, mortgages, &c., of land. In the absence of a debenture system in connexion with a registry of title, the necessity which will exist for settling lands, and creating trust estates in them, will, I think, in consequence of the incidental complication of the title, present an insuperable impediment to the establishment of a simple or practicable registry of title. There are other obvious advantages to be anticipated from the issue of land debentures. Land represented by them will virtually acquire the negotiability of money, and may be considered as converted into cash equivalent to their amount, not only for the benefit of the landowners, but of the community at large, whose circulating capital will be proportionably increased.

January 1855.

JOHN B. MURPHY,
5, Lower Gardiner Street, Dublin.

Mr. J. Pim.

Mr. JONATHAN PIM (William Street, Dublin).—20*th January* 1855.

1. I THINK there can be no doubt that the sale and transfer of land is impeded and rendered more expensive than it ought to be, by the necessity which now exists for the retrospective investigation of the title on the occasion of each successive transfer.

2. No answer.

3. It appears to me that the sale and transfer of land would be facilitated by establishing a public register or record of the title to the land.

4. This increased facility of sale and transfer would, I think, be obtained by avoiding the investigation of the past title, by diminishing the expenses of transfer, and by making the buyer more safe and secure.

5. It seems to me that the principal advantage in the saving of expense would accrue to the seller, who would be enabled by the increased facility of sale and transfer to obtain a higher price for the land sold.

6. No answer.

7. It appears to me practicable to form a register of title as distinguished from a register of the various deeds and assurances under which the title has been derived.

8. I think a register of title might be made instrumental in simplifying generally the title to land and the forms of conveyance.

9 to 24. These questions are generally technical. I do not possess the legal information which would enable me to answer them.

25. The instances of misappropriation or misdealing by trustees of stock or money, involving loss to their beneficiaries, are I believe by no means frequent or numerous. I have known very few cases of this description.

26. I think it would be desirable, with reference to the general interests of the community, that the registered owners should always possess full powers of sale and of leasing; and I have no doubt that, in the case of settled land, arrangements could be made for the efficient protection of the interests of all concerned in the trust.

27. It appears to me that the security of settlements and trusts would not be unduly mpaired by their ceasing to bind the title and follow the land.

28. It would be very desirable, for the purpose of ensuring accuracy in the registered title, and for the security of purchasers, to couple the registry with a public map.

29 to 33. No answer.

34. It appears to me that the complete Ordnance Survey and the uniform Public Valuation of Ireland offer considerable advantages for the introduction of a permanent system to facilitate the sale and transfer of land; and I think the principle acted on in the Incumbered Estates Court, giving to the buyer an indefeasible title and transferring all the liabilities of the land to the fund arising from the sale, is peculiarly important and valuable.

35, 36. No answer.

JONATHAN PIM,
20th of 1st month 1855. 22, William Street, Dublin.

Mr. C. J. Hargreave, Q.C.

Mr. CHARLES JAMES HARGREAVE, Q.C., (Incumbered Estates Commissioner, Dublin.)—20th *January* 1855.

1. IT cannot be doubted that the retrospective investigation of a vendor's title upon each successive transfer or other dealing with land occasions delay and expense; and I consider that the delay and expense thus occasioned operate as artificial impediments

Mr. C. J. Hargreave, Q.C.

to the free transfer of land. To that extent they operate in a manner inconsistent with those principles of social economy, which require that every kind of property should be allowed to distribute itself among the members of the community, according to its natural tendency, under the free operation of the social causes which are for the time being in existence. It appears to me that all artificial or legal restraints of this nature are necessarily injurious. An extreme instance of the injury, which may be thus occasioned, has recently exhibited itself in the state of landed property in Ireland and the general condition of the country arising therefrom; as they existed prior to the changes which have resulted from the operations of the Incumbered Estates Court. The practical impediments in the way of the transfer of land had become, in the course of time, so great and so powerful in their effect, that although there existed an abundance of capital which was naturally seeking for investment in land, and although the land itself was so incumbered that in the natural course of affairs it would require to be sold—yet these natural tendencies were almost totally counteracted and prevented from producing the changes to which they properly tended by the magnitude of the impediments to which I have referred. The corresponding impediments now existing in England do not appear to me to be at present of such a magnitude as to produce any marked social evils, though in individual cases they cause loss and inconvenience; but I think it probable that their operation would be severely felt in times of great depression and adversity. They operate in such a manner as to indispose incumbered proprietors from selling off a sufficient portion of their land to pay off the charges, at a time when, from the general prosperity of the country, such sales could be effected at a pecuniary advantage; and the necessary consequence is, that these proprietors are subjected in times of depression to the loss occasioned by disadvantageous sales resulting from the pressure of creditors, who always require their money for reinvestment at periods of low prices. We are very much in the habit of thinking that proprietors so circumstanced have only themselves to blame for not having realized when the circumstances were favourable; my experience in Ireland has rather tended to impress me with the idea, that some portion of this blame rests upon the state of the law of real property which renders the sale of land a work of time and cost.

I may add that these impediments are naturally cumulative in their operation. From the want of a ready power of sale, fresh charges are created; and the charges existing become themselves (at great disadvantage) the subject of sub-charges and of transfer; and thus the difficulties of title are increased from year to year. Facilities for sale and transfer would tend more than any other changes in the law to the simplification of titles.

Again, the existence of technical defects in titles substantially good, places an undue amount of power in the hands of an unscrupulous purchaser. The proceedings towards the completion of a sale, after the contract is made, necessarily occupy a considerable time; during which the purchaser has an opportunity of ascertaining, from the state and changes of the markets, whether his purchase is likely to prove a good speculation or the reverse; and his acceptance or refusal of the title is often unduly influenced by considerations arising from these circumstances.

The necessity for investigating the past title and procuring the means of proving it and substantiating it for the future, places great obstacles in the way of selling a considerable estate in numerous lots; as it is generally difficult and always expensive to furnish each purchaser with the necessary evidence. One of the important advantages of a new and parliamentary title is found in the great facility it confers for the subdivision of estates upon a sale.

The remarks which I have felt myself at liberty to make, though possibly somewhat wide from the immediate question in hand, embody my principal reasons for thinking that the necessity (as it now exists) for the retrospective investigation of title does impede the transfer of land, and renders it more expensive and tedious than it ought to be.

2. and 3. I do not think that the disposition of land in England is rendered practically or materially insecure from the want of a registry of the assurances deducing the title. Most of the dealings with land are effected through the agency of professional advisers, who thus ordinarily become cognizant of all the dealings likely to affect the present title; and it is generally found in practice, that a purchaser places a well founded confidence in the probity of the professional persons employed, and has little reason to suspect the suppression of genuine instruments or the production of fabricated ones. A purchaser's title is occasionally defeated or rendered insecure by the discovery or production of a previously unknown will; but the suppression of a known will is seldom practicable.

The main elements of insecurity of title in the hands of a purchaser, and, consequently, of difficulty in effecting a transfer, appear to me to be of another character. I would particularly specify the following:—

1st. The application, against purchasers, of that doctrine of courts of equity which goes under the name of "implied notice," or "constructive notice;" especially that portion of the doctrine which appears to contravene the policy of the statutes made for the protection of purchasers.

2dly. The want of an efficient and uniformly-acting statute of limitation.

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3dly. The perpetual existence of certain classes of rights which have never, or not for many years, made themselves known by active exercise; such as a right to mines reserved in some old patent or deed, or a right to levy rentcharges and annuities out of the purchaser's land, which have been usually paid out of other lands liable thereto.

4thly. The existence of different tenures of land (freehold, copyhold, customary, ancient demesne, &c.)

5thly. The creation (by law or constructive equity) of interests in land and charges upon land, independently of the contract of the parties. It is obvious that many of these difficulties are remediable without injustice, and without involving important new legal principles; and if the law could be simplified on the last head, titles would depend more than they do at present on documentary evidence, and would thus become more fit subjects for registration.

A registry of the title to the land would of course remove all legal impediments to transfer, and would afford a purchaser the means of obtaining always a secure title; and I understand that it is the object of these questions to elicit opinions as to the feasibility of a scheme for such registration of title.

4. A registration of title would increase the facility of sale and transfer in both the ways mentioned. A registration of assurances would make the buyer more secure; but would not, I think, diminish the expense of transfer. I incline to think that a registration of deeds by memorial impedes the transfer of land. It is unnecessary, however, to go into this point, as I presume no one would seriously propose for England a registration of assurances otherwise than by a deposit of the assurances themselves or copies.

5. I think the principal effect would be to increase the saleable value of the land by removing difficulties, and thus increasing the desire to invest in land. It would also enable the buyer to ascertain his expenses accurately. At present the expense depends partly upon matters which come to his knowledge only after he has entered into the contract.

6. I do not consider that any principle of arithmetical average can be applied to such a subject.

7. to 16. and 30. to 33. I think that is *practicable* to form a registry of title without materially affecting the extensive power of dominion and disposition which the owner of land does and ought to possess; but I think that the constitution of such a registry of title, so as to be really useful and to work with facility, would involve several changes, (perhaps in themselves beneficial), in the law of real property.

In the first place, it would be desirable to reduce to the utmost simplicity all the forms of absolute ownership over land. With that view I should propose to abolish, by proper means, all such incorporeal hereditaments as seignories, manors, royalties, manorial rights and commons, and all incidents and consequences of tenure; and not to admit of any easements except such as are naturally incident to the physical position and condition of the land and of the land surrounding it, or such as have been created by contract, and are still required for the use and convenience of adjoining land. The existence of rights of this sort I should consider as incident to the property in a physical rather than a legal sense; and a purchaser should make it his business to ascertain them by inspection and inquiry, rather than as matter of title to be learnt from documentary evidence.

With regard to rents (not being rents payable by tenants or lessees), I should consider it important that they should always be redeemable by the proprietor of the land in the same way that quitrent is redeemable; and with regard to old reservations of mines and quarries, I should not consider it expedient to admit land upon the register until all claims of this nature had been judicially disallowed or else strictly defined, so as to admit of being always continued upon the register as a patent disability affecting the land.

If the points above alluded to were disposed of, I am not aware that there would be in our law any systems of absolute ownership except fee simple and leasehold. The thing, the title to which is to be the subject of registration, would be either land (subject or not subject to leases as the case may be), or a lease (subject or not subject to underleasesas the case may be).

The topic under discussion, then, consists of two branches. It is necessary to consider the system of the registration of title as it will be when the system is permanently in operation upon particular land or a particular lease, assuming the transition from the present to the proposed system as completely effected in relation to such land or lease; and it is necessary to consider in what manner any particular land or lease is to be brought under the operation of this system of registration of title.

As to the permanent system, I think it might be based in the main upon some such principles as those which have been propounded for Ireland by one of the learned members of your Commission, Mr. Vincent Scully, and that its operation should be directed by and under the control of a tribunal specially dedicated to the office. During the change from the old to the new system, such a tribunal would be required to perform judicial functions of a high and important character, which would, however, under the influence of the system when in progress, tend gradually to become more ministerial; but they would never assume permanently a merely ministerial character.

The method of *charging* land with gross sums of money, and effecting its discharge by sale or payment, has been fully considered in the scheme to which I have referred; and,

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on this point, I think that the adoption of that, or some similar scheme, would be of public advantage.

The *sale* of land would take place under the immediate control of the tribunal; a new Parliamentary title being conferred upon each occasion. On such a transfer the tribunal should be enabled to exercise powers similar to those conferred upon the Incumbered Estates Commissioners in Ireland, by the 23d section of the Incumbered Estates Act; a power which has been of great service and important public benefit in the sales which have taken place in Ireland. This power, whilst it protects the rights of all tenants and lessees, enables a purchaser to know conclusively what interests exists against him.

The *settlement* of land would readily adapt itself to the new system. Probably the ordinary method in practice would be to vest the whole estate on the register in trustees, whose duties would be defined by a private settlement. This, however, would not be essential; for that portion of the settlement which consists in the creation of charges might be effected by the issue of certificates of charge to trustees, who would deal with them in conformity with their trusts, the charges being in effect attendant upon the estate until under the trusts they should become raisable.

If it should be thought essential, the scheme would probably admit of the placing of life estates and immediate remainders upon the register, though the expediency of this course may be doubted.

As to the second topic, the first and best method of bringing estates upon the register would be upon the occasion of the sale of any land or lease, in which case a Parliamentary title might be conferred by the tribunal after a course of proceeding similar to that which is now in operation in Ireland. It would probably be found that this method is practically safe; and that upon any actual *bonâ fide* sale with due publicity, all latent claims will be brought to light, so as to be judicially disposed of. The only other method which occurs to me is to enable the tribunal to confer an indefeasible title without sale, wherever a perfect *primâ facie* documentary title to the absolute interest in any land or lease is shown, after due publicity and the lapse of a reasonable time.

I doubt whether it would be expedient to get the full title upon the register by degrees, or to admit of the registration (with an indefeasible title,) of partial interests, prior to the absolute interest being brought upon the register.

17. to 24. All rights with which a sale by the registered owner would interfere should admit of protection by distringas, pending the necessary proceedings to establish or overrule the alleged right; all such proceedings, including the distringas, to take place before the tribunal itself or under its immediate control; but no person should be entitled to place a distringas on the register *mero motu*, or to retain it except *pendente lite*. If A should have procured a registered title as heir of a deceased proprietor, and B alleges a title under a will, and has reason to apprehend a transfer by A, it will be the duty of B to make his claim before the tribunal; and, pending its decision, or pending the proceedings which the tribunal may direct, a distringas should be placed on A's title. A similar rule would apply if a *cestui que* trust apprehends an unauthorized transfer by the registered trustees; or if a purchaser by contract fears a subsequent dealing by his vendor, &c.

25. I am disposed to think that misappropriations by trustees of stock or money for their own purposes are not numerous, but that misdealings under the influence of one class of *cestui que* trusts to the prejudice of another class are not uncommon. It may be doubted whether the modern rules of equity, defining what are and what are not misdealings, have not been stricter than the views and habits of society have required.

26. and 27. These are questions involving some difficulty. I am disposed to think that the security of persons having beneficial interests would not be unduly impaired by the existence of a registered ownership in trustees.

28. I think it would be desirable, but not necessary, to couple the registry with a public map.

29. If a title should be claimed to land described by means of a map, it would be necessary for the registrar (or tribunal,) to take steps to ascertain that the land claimed is the same as the land described; this implies that he ought to ascertain the accuracy of the description and the identity of the land.

34. The existing registry of deeds in Ireland gives a species of security in conferring parliamentary titles which would be wanting if the registry did not exist. The security, however, is only imperfect, inasmuch as it often happens that the material parts of deed are not disclosed by the registry, and the deeds registered are often not forthcoming.

In most of the sales that have been effected by the Incumbered Estates Commissioners, the various lots sold have been accurately described by maps on the rentals and conveyances. This is a point to which purchasers attach great importance; but it would not have been so uniformly and extensively practicable, if the Ordnance maps had not existed.

The registry of deeds would therefore be useful, by rendering more safe the transition from the present system to a permanent system, such as is referred to in this question; and the Ordnance survey would in the permanent system be of great utility in simplifying the methods of describing and identifying land.

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If a permanent system of this nature were proposed to be adopted, I should think that the machinery of the Incumbered Estates Act might be used for the purpose of effecting the transition to that system.

35. I consider that the creation, transfer, and extinguishment of charges on land ought to be rendered as simple as the transfer of land itself; but I have not considered any plan for effecting that object except the one proposed by Mr. Scully, to which I have previously referred. I should consider this as an important feature of any permanent system of land-transfer, and I think it would greatly increase the value of securities on land, and tend to diminish the average rate of interest at which landed proprietors would be able to obtain advances.

36. I do not possess any special information on the matter referred to in this question beyond what is incidentally contained in my answer to the 34th question.

The Lord Monteagle.

The Lord Monteagle (Ireland).—20*th January* 1855.

1. There can be no doubt that the present system of sale and transfer of land is impeded by the necessity for such retrospective investigations of title. Compare the cost of sales under the Incumbered Estates Act with that of ordinary sales and conveyances.

2. This depends on the nature and legal consequences of the registry supposed. If that registry is defeated by subtle equities, raising questions of constructive notice and other difficulties, it may promise a simplicity and security which it does not give.

3. If the registry can be made simple, capable of easy reference, and affording the information which a purchaser requires to justify him in making an investment, there is no doubt that the sale and transfer of land would be greatly facilitated.

4. It would be obtained in all these ways, and also in an important degree by bringing before the attention of capitalists in a clear, intelligible, and authoritative shape the various opportunities of investment which present themselves.

5. It would be a saving to both in many cases; the advantage would however be mainly to the seller, for the buyer has always the power of deducting his expenses from the price he offers, whilst the seller is often compelled to sell without such an alternative.

6. No such average costs, if capable of being struck, would be very important. But it should be remembered that the costs of such investigation are a tax or duty contra valorem, falling heaviest on the smallest properties, driving small capitalists consequently out of the field, diminishing the competition for land and lowering its price.

28. If not absolutely necessary, it would surely be highly expedient; and to effect this in Ireland the Ordnance survey, on a scale of six inches to a mile, and including all townlands generally conterminous with ownership, affords the greatest facilities.

29. It would seem to me that this would be difficult, beyond requiring the party registering to furnish certain evidences which he should be bound to give *suo periculo*.

30. So far as requiring the production and authentication of any documents considered by him necessary for the completion of registry.

31. It would be sufficient to give certain advantages to registered over unregistered conveyances.

32. It would seem that a parliamentary title could not safely be founded on ex parte proceedings. But what would be nearly equivalent to a parliamentary title would by degrees grow out of registry, if kept simple.

34. Not being a professional man, I feel it would be presumptuous to deal with the question of the present registry of deeds; I am inclined to think, however, that it has done good, though that good is limited by the equities set up, which limit and defeat its original intent. The facilities derived from the Ordnance survey and valuations are incalculable, and diminish the difficulties and increase the advantages of the registration to a degree hardly conceivable. No other country perhaps is so fortunately provided with the data required for a perfect registry. Where sales have taken place under the Incumbered Estates Court, they furnish conveniently a *terminus à quo* which limits antecedent investigation.

35. I doubt the advantages of this. If these debentures were to be in small sums transferable on delivery and not payable in specie at a fixed and not remote period, I think they would be most dangerous to private and to public interests, on the same grounds as I consider the securities under the *Crédit foncier* to be in France.

36. The Ordnance survey of Ireland originated in a report of a committee of the House of Commons, of which I had the honour of being chairman. I beg to refer to that report, and to my evidence given subsequently before a later committee. The advantages of the survey and the valuation founded upon it are really incalculable. The only disadvantage arises from the want of the map on the one inch scale, as yet most unjustifiably suspended. The scale in the rural districts, six inches to the mile, is in my judgment the very best that could be chosen. The scale in town is five feet to the mile. The map is applicable to the county and poor rates and grand jury presentments, to the tithe composition, to the elective franchise, to the management of private estates, and to the purchase and sales of real property. The cost of this noble work exceeded a million, but never was money better laid out.

Monteagle.

20th January 1855.

Mr. MATTHEW R. SAUSSE, Q.C.—*Dublin, January* 20, 1855.

Mr. M. R. Sausse, Q.C.

1. THE sale and transfer of land is in all cases much impeded, and rendered more expensive than it ought to be, by the necessity for retrospective investigation of title; and where the property is small the expense is usually so disproportionately large, as either to preclude a sale, or greatly deteriorate the value.

2 and 3. A public register or record of the naked fact of title, would facilitate the disposition of land, and render it more secure; but a registry of assurances, such as exists in Ireland, though it may contribute to render the disposition of land more secure, yet greatly impedes its transfer, through the increased delays and expenses which it entails in deducing title.

4. Were the investigation of past title avoided, and the expense of transfer diminished, increased facility for sale and transfer of land would be the result, provided the register be conclusive proof of title; and the more secure the buyer becomes, the more will sales be facilitated, and the value of land increased. Were such a register in existence there would be an end to all questions of title as between seller and purchaser.

5. The diminution of expense would benefit both buyer and seller, but principally the latter who has to bear the expense of making out title.

6. It would be a matter of great uncertainty to attempt to strike an average of the proportion of expense which arises from the investigation and inquiry into title upon the purchase of land; but with the exception of the costs of the conveyance and stamp duty, all other expenses attendant on the transfer of land are strictly such as arise from investigating title.

7. The title to any land being a result of both law and facts, obtained through the deeds and assurances affecting it, such a result can be so recorded as to form a register of title for marketable purposes, quite distinguished from a register of the various deeds and assurances, through which the title has been deduced. So long as the present unlimited power of charging land in different ways shall be continued, and until all trusts affecting it shall become personal confidences, some register of those charges or trusts will be required. They should not, however, as a general proposition, embarrass or bind the title, but merely the produce of any sale of the land. Upon the first investigation for the purpose of placing the title of any land on the register, the means will necessarily arise to register all existing charges or trusts. That investigation must, in my judgment, be effected through the intervention of some Court, or person having judicial powers, and such a Court should be continued in order to superintend the register of title and sales of land, and whilst on the one hand it should give parliamentary title, it would upon the other, protect all parties interested from any misapplication of the produce of the land.

8. Such a register of title as I have described would necessarily be instrumental in simplifying the title to land and the forms of conveyance. The latter should be a simple transfer of title, either by entry in books to be kept for the purpose, or by a short statutable deed similar to that in use by the Commissioners of the Irish Incumbered Estates Court.

9. The register of title should represent the absolute power to transfer the entire interest.

10. The present actual and existing title should alone be represented on the register, and all retrospective inquiry into former dealings be avoided, so far as a purchaser may be concerned.

11. Were the register to disclose the deduction and history of past title, it would become in effect a registry of assurances, with the disadvantage of fixing the purchaser with notice of every claim affecting the land, which the present registry of assurances does not necessarily do.

12. It would be an essential part of a system for the registry of title, that all forms of ownership, except those admissible on the register, should be in the nature of personal trusts only.

13. Equitable interests or trusts should not bind or affect the title of the registered owner. To whatever extent special protection upon the register is afforded to equities or trusts, to the same extent will facility of sale and transfer of land be injuriously affected. To attain these latter objects to the fullest extent, title on the register should not be clogged with such protections, which under the designation of distringas, &c. are but other names for a registry of assurances (such as exists in Ireland), with all its attendant delays, inconvenience, and expense.

14. Upon the first formation of a register of title, existing equities and trusts should be specially noticed and protected. All future equities and trusts should be personal confidences merely enforceable against the registered owner, or against the produce of the land whenever sold, without interfering with the facility for its sale and transfer.

15. Consistently with attaining the greatest facility of transfer, together with simplicity of title, trusts and equities, intended to affect the registered owner, should not be protected upon the register, so as to prevent him from transferring the land, whilst such protection exists, or from transferring it otherwise than subject to the protected interest Facility of sale and transfer could not exist were the land (as in the first case) to be tied up until the final settlement, by suit in Chancery or otherwise, of any questions which might arise upon the trusts and equities sought to be protected; and neither

facilty of transfer nor simplicity of title would be found to result, if (as in the second case) the purchaser were to take the land, subject to all the contingencies and unascertained equities to arise out of the various claims proposed to be specially protected. *Mr. M. R. Sausse, Q.C.*

16. The existing system of settlements, by which the limitations and trusts of the settlements modify and become part of the title, could not be continued consistently with the principle of a simple register of title, and of facilitating the sale and transfer of land. But such limitations and trusts could be securely given effect to as personal confidences, through the instrumentality of a registered owner or owners and of a judicial court for superintending registry and transfer.

17 and 18. Were the principle of a simple register of title adopted, settlements, trusts and equities would not be adequately protected in all cases by merely allowing a distringas, caveat, or stop order of a temporary character to be entered, without further providing the additional protection of a judicial tribunal which could interfere summarily on all special occasions, in order to enforce rights or prevent frauds, as a court of equity will do with reference to railway stock or money in the funds. Any permanent distringas, &c. to protect particular interests, would amount in effect to a registry of assurances, with its attendant evils.

19 to 23. I shall offer no opinion in answer to these questions, being adverse to any system of distringas, beyond the power to grant summary injunctions or orders, which should be inherent in the Court I have suggested, as a part of its equitable jurisdiction.

24. In answering the question, whether I can suggest any other mode than the distringas, &c. of protecting equitable interests and trusts against the improper alienation of land by the "registered owner," I will take the opportunity of stating why a registry of title is required in Ireland, and how consistently with its existence equitable interests and trusts can be protected against such improper alienation.

In consequence of a registry for deeds and assurances affecting land, having been in continuous and compulsory operation in Ireland for the last century and a half, that institution has drawn within its records the entire land of the country, and in that respect, Ireland is differently and more favourably circumstanced than England, for bringing into speedy operation, with security to the public, a system for simplifying title and facilitating the sale and transfer of land.

In Ireland, security of title is attainable by means of its registry of deeds and assurances; but, notwithstanding the recent statutes of limitation, that superior security has to be attained at the cost of so much delay, expense, and inconvenience, that the operation of the registry of deeds has long become a crying evil amongst all branches of the legal profession, as well as the landed interest, and has offered great obstruction to the sale and transfer of land. It has been frequently the subject of complaint before Commissions and Committees of both Houses of Parliament, and its injurious effects were so sensibly felt by the landed proprietors of Ireland, that, in May 1850, petitions, signed by numerous peers and other great landholders, were presented to both Houses of Parliament, "praying that "the principles of the Incumbered Estates Act (then recently established) should be "extended, so as to enable any proprietor to have his title investigated by a competent "legal tribunal, and a Parliamentary conveyance executed to the purchaser." Simplicity of title, and facility of sale and transfer of land, were then eagerly sought for by those most interested in obtaining them, and I believe that desire has since increased. Those benefits were considered an ample return for the expense which might be incurred in having title investigated by a "competent legal tribunal."

But such a measure, if carried out, would only relieve existing proprietors, for the moment, from some of the evils of the existing registry system. With a continuance of the present unlimited powers of creating every species of charge, trust, and equity as an incumbrance upon land, in connexion with the present registry of deeds and assurances, that relief would be of a very transitory character. Every new charge would form a fresh blot upon the young title, and these would go on accumulating as before, year after year, until the mischief would again become intolerable, and a future land-lock should lead to another violent and compulsory liberation of the land.

The interests of society in Ireland now require some measure of a permanently active character, which will not only free existing titles, but keep them free for the future.

I have already stated that I do not see any difficulty in registering "title," as distinguished from a registry of assurances. To place "title," however, upon a register, it must first be ascertained, and being itself the result of a combination of law and facts, that result can only be attained by persons competent to deal with law and facts and with power to do so. That power is the judicial office.

I have therefore, come to the conclusion, that if a "register of title" is to be established at all, it must be through the exercise of judicial power.

Considering, then, this question with those views, I have arrived at the conviction, that, consistently with simplicity of title, and facility of sale and transfer, equitable interests and trusts can be best protected against improper alienation of land by the "registered owner," through the instrumentality of trustees without survivorship, aided by the vigilance of a Court, (to consist of one or more judges,) which shall be exclusively engaged in superintending the register of title and the sale and transfer of land.

25. Taking into consideration the very large number of cases in which there are trustees of stock or money, I do not think that the instances of misappropriation or

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misdealing, involving loss to their beneficiaries, are comparatively numerous. Trustees more frequently misdeal with funds at the solicitation of their beneficiaries, than misappropriate for their own benefit.

26 and 27. I have already stated my objections to any system of distringas, &c., and the mode in which I consider that beneficial interests might be sufficiently protected, consistently with a simple register of title.

28. It may not be absolutely necessary, but it certainly would be most desirable for the purpose of ensuring accuracy in the registered title, and for the security of purchasers, to couple the registry with a public map.

29. I do not think it indispensable to the registry of the title that the registrar should ascertain the accuracy of the description and the identity of the land, but I think the maps of the ordnance survey in Ireland might be made the means of ensuring that accuracy.

30. The Chief Registrar, or Court to superintend the registry of titles, should be invested with judicial authority for the purpose of ascertaining the title, which must always be the result of law and fact. Otherwise the title should be investigated by some competent authority, and the result of the investigation handed over to the registrar to be placed by him upon the register. The title, to be so recorded, could not be left to the discretion of the party registering it.

31. The registered title, and the effects of conveyances under it, should present such advantages as to render every owner of land anxious to get the benefit of it. Land without those advantages would not be so marketable as that possessing them, and under those circumstances registration may be voluntary. So long as any person does not want to sell his land, he should not be obliged to register the title; when he does, the purchaser will in all probability require a registered title.

32 and 33. Registration at the outset should confer a parliamentary or warranted title, which should be the return for the expense of investigation.

In Ireland, the existence of a general registry of assurances, and of judgments, &c., enables the Commissioners of the Incumbered Estates Court to investigate title to property, with the almost absolute certainty of having all charges affecting the land brought under their notice at once. The same degree of certainty does not exist in England, and there, some modification of the period from which registration should date might take place.

In either country any possible uncertainty or injury might be easily guarded against, by a public guarantee fund, to be raised by a trivial charge or stamp duty, upon investing lands with the great privilege of a parliamentary title.

34, 35, and 36. With respect to the "Supplemental Questions," which more peculiarly relate to Ireland, I believe, that by reason of its existing registry of deeds, its complete Ordnance survey, its uniform public valuation, and the machinery of its Incumbered Estates Court, Ireland possesses advantages for the introduction of a permanent system for facilitating the sale and transfer of land which do not exist in any other country.

The first step in creating such a system is the formation of a "Registry of Title" to land. All insecurity in ascertaining the existing title is removed by the certainty with which it can be deduced through the registry of deeds, and facilities to arrive at that title are attainable by the machinery of the Incumbered Estates Court, successfully engaged as it has been for the last five years in investigating and ascertaining numerous titles, which might all have been placed upon a simple register of title, had one existed for that purpose.

The sales in that court have been usually made according to the Ordnance maps on an enlarged scale, which have been attached to many of the conveyances, and thus rendered conclusive, as to boundaries and title, against every one. In some cases purchasers under that court have absolutely refused to complete their purchases, until they succeeded in having copies of the Ordnance maps attached to their deeds of conveyance, and I know of one instance where, subsequently to the sale, the Court, after notice to the adjoining proprietors, directed a copy of the Ordnance Map to be attached to the conveyance. Frequent as has been the practice to convey lands by reference to these maps, no inconvenience that I have heard of has resulted from their adoption. The great accuracy of this survey has become universally recognized for all purposes of public taxation and private dealings with land. There would be little difficulty and great convenience in rendering it a statutable delineation of all townland boundaries.

Thus there are ample means in Ireland for forming a register of title with safety and facility, whilst every townland could, with little pains and expense, be conclusively identified upon a public map of acknowledged accuracy.

The next step should be to make such a system permanent, and as nearly as may be, self-operative.

I may observe, that those who desire full facility for the sale and transfer of land, and at the same time to continue the present unlimited powers of subjecting it to a variety of charges and strict settlements, are vainly attempting to unite two principles which are absolutely incompatible.

Complication of title and of equities have been constantly arising out of an unrestricted power to charge and settle land. This power to fetter and lock up land has been the

fruitful source of litigation and expense, through which, perhaps, more families have been ruined and properties wasted away than have ever been preserved by its means. *Mr. M. R. Sausse, Q.C.*

The greatest benefit that could be conferred upon the landowners would be to limit, within reasonable bounds, these fatal privileges of embarrassing and tying up their estates, and thus to enhance the value of their land to a large extent.

The only practical effort hitherto made in that direction, that I am aware of, was in the "Transfer of Land Bill" lately introduced into Parliament by Mr. Vincent Scully. Upon a first consideration it may startle by its novelty and boldness, but having had the advantage of carefully considering the subject for some years, and been fully afforded the benefit of much research in forming my own views, I feel in a position to state with confidence that the provisions of that Bill afford practicable means for ensuring security and simplicity of title, together with the greatest facility for the sale and transfer of land that it is capable of, consistently with preserving to the landowner power to pledge his property as a security for beneficial loans.

All persons acquainted with the proceedings of the Incumbered Estates Court in Ireland, are painfully familiar with the destitution entailed upon respectable families of reckless owners and incautious lenders, through the unrestricted power to incumber land with mortgages, judgments, and other charges to an unlimited extent.

By Mr. Scully's Bill the power of charging any land, brought voluntarily under its provisions, is limited within the reasonable amount of one half the value of the land, as estimated by the court it proposes to create.

In other countries, however much the social policy of a measure of this nature might be approved of, the difficulty and expense of ascertaining the proximate value of each property would, perhaps, at present render such a proposition almost impracticable; but in Ireland no such difficulty exists, because its public "uniform valuation" has been already sanctioned by minute investigation, and by a power of appeal in each successive stage; and in three fourths of Ireland, where it has already come into operation, the public taxes of the country, the poor rates, county rates, and income tax, are by different statutes based upon it.

It is vain to attempt to simplify title to land, unless the charges which affect and complicate title are also simplified, and, accordingly, under that bill the power of charging land is proposed to be exercised by means of uniform securities called "debentures." Being limited in amount, and of undoubted solvency, they are to be without priority, terminable in a certain number of years, and transferable, either by special entry or by simple delivery. No other mode of assignment is necessary, and at the expiration of the fixed period the title remains clear of its sole incumbrance.

The bill is voluntary and prospective in its character, and preserves existing interests. It adopts the practised machinery of the Incumbered Estates Court, and admits the aid of the registry of deeds, and the Ordnance survey, for investigating title and forming an accurate register of it. To suit the exigencies of society, it permits future leases of land, or easements in it. Transfer is effected by simple entry in the books of the court. Parliamentary title follows, and a certificate of title is issued by way of credential to the person registered, who represents the absolute power to transfer the entire interest.

Limitations in settlements may be sufficiently effected and sustained through personal trusts and confidences, protected by the character and sufficiency in number of trustees, and aided by the equitable jurisdiction of the court, which can make orders to meet any special cases.

Under this bill, the title to land will be simple, purchasers will be secure, and sale and transfer will be facilitated to an extent hitherto unknown, and beyond which I do not think it can be usefully carried.

With regard to the successful operations of land debentures in these countries or abroad, I have always heard that such debentures issued by Mr. Griffith under the Irish Drainage Acts were successful, and that in Prussia similar debentures have formed a current security for the investment of capital.

I am also aware, that in 1850 petitions were presented to Parliament on behalf of a large body of Irish landowners, asking for statutory powers to enable them to create simple and transferable securities, such as "land debentures, or certificates of charge," which might be easily and inexpensively realized out of their estates immediately after default of payment. Amongst intelligent landowners the same desire still continues; and I think it will be apparent to any reflecting mind, that, if the present power of creating complicated and unlimited incumbrances be continued, it will not be possible to simplify title or facilitate the sale and transfer of land.

The Lord Dunalley (Ireland).—*20th January* 1855. *The Lord Dunally.*

Sir, Nenagh, 20th January 1855.

I beg to apologize for not having sooner answered the queries which you did me the favour to send me. They required some consideration, and I have been otherwise much occupied. I now send replies to such of the questions as I feel capable of answering.

1. The sale and transfer of land are no doubt greatly impeded and rendered very expensive by the necessity that exists of investigating a long derived title. No greater boon could be conferred on the various parties connected with landed property than to

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enable them to deal freely with land under such a title as is now derived from the Incumbered Estates Court.

5. The advantages of a simple title would, I think, be enjoyed by both buyer and seller. Each would save costs.

10. It appears to me that, were a new system of title once established, all retrospective inquiry should be prohibited.

28. It seems very desirable that, on the establishment of a parliamentary title, a map of the premises should be attached to the other necessary documents, and that it would be highly convenient to couple any registry of land with public maps.

29–33. It would be essential that the Court should define and identify the premises, and of course have all necessary powers for obtaining information, either by ordering the production of documents or by giving public warning to all persons interested to dissent from their proposed decree within a limited time.

34. The Ordnance maps, though not conclusive as to boundaries, give perfect information as to acreable contents of townlands, &c. as therein laid down. Such information, together with that afforded through the registry of deeds office, must give important facilities in carrying out measures for the simplification of title.

35. This question (about land debentures) appears to refer to a system distinct from the subject of simplification of title, but requiring that simplification as its basis. Such a system I have long thought would be of the highest possible value, if it could be so arranged that instead of expensive mortgages or other deeds for securing the payment of money borrowed upon land, a cheap and easily transferable security could be created, such as a debenture or certificate to be issued by the authority of some Court which should limit the issue of the debentures to a certain proportion of the value (as estimated by the Court) of the land, perhaps one half of that value.

The advantages derivable from such a mode of raising money would, I think, be very great. Not only the raising of money but the paying of it off is at present an expensive and complicated process. Such land debentures could be granted with little expense, pay a moderate stamp duty, and be cancelled almost without expense. A principal cause of the accumulation of charges on land in Ireland has been the expense and legal complication in the process of paying them off. People have preferred to pay interest, and to employ their money otherwise, to the extinguishing of such charges.

I have read accounts of the operations of the Prussian Land Banks, which appear to have been highly successful, and do not seem to have led to that reckless expenditure which some people apprehend (I think erroneously) as a necessary consequence of facility in raising money. I believe some system of the kind, the "Crédit foncier," is to a considerable extent and with success in operation in France.

Facility in raising money should be accompanied by the most complete facility to the creditor in recovering it; and that being provided, I see no more reason why prodigality should be practised with reference to land debentures than by bills of exchange.

I have answered this question at some length, because the subject is one in which I feel much interest, and in connexion with which I took some years ago a somewhat active part on the introduction into Parliament of a Bill called the Securities for Advances Bill. A petition emanating from a public meeting was at that time very numerously signed by proprietors, incumbrancers, and others interested in the land of Ireland, praying that the principle of that Bill might be beneficially extended so as to place in future all landowners in a position to offer for their debts such simple and transferable securities as might be easily and inexpensively enforced and realized out of their estates; and that this desirable object might be effected by means of convenient land debentures or certificates of charge. The petition desired also that the principle of the Incumbered Estates Act should be so extended as to enable any proprietor wishing to sell his estate to have the title investigated by a competent legal tribunal, and a parliamentary conveyance executed to the purchaser.

The objects and prayer of that petition were concurred in by many influential persons in Ireland. The number and character of the petitioners and the eagerness with which they came forward convinced me that a strong desire existed in Ireland to obtain increased facilities for dealings in land accompanied by parliamentary titles and some simple system of land debentures.

My own convictions are decidedly in favour of affording all practicable facilities for the safe and easy transfer of real property. Wishing to your commission every success in their arduous undertaking,

I have, &c.

G. W. Sanders, Esq. DUNALLEY.

The Right Hon. BARON GREENE (Dublin).—22*nd January* 1855.

The Right Hon. Baron Greene.

1. I DO consider that this is so.

2. In Ireland, this cause of insecurity does not exist, assurances being registered, although the title (i.e. the whole deduction of title) is not.

3. I doubt whether the transfer of land would be facilitated by a register of the title, to such an extent as would countervail what I conceive to be the objections to such a register.

4. The sale and transfer of property would in case of a register of title be probably facilitated by diminishing the necessity for investigating past title; but I should not

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consider a purchaser's *security* to be thus increased, because opportunity might be afforded to litigious or speculating persons to discover defects in title. I should not, in my own case, wish to have the whole of my title to property recorded.

5. So far as relates to the mere point of expense, there would, I conceive, be a saving both to seller and purchaser.

6. This is a question rather for a solicitor than a lawyer. My experience does not enable me to answer it

7. I should not say that this was *impracticable*, although I think it would be difficult; title depending not merely upon deeds or writings, but upon facts otherwise evidenced.

8. I do not know what is meant by "simplifying" title. If it mean the giving to a purchaser additional security, I should say that the merely spreading out the title upon the registry would not have that effect, unless a legislative provision were made giving to the registry some conclusive efficacy as evidence, which I am not prepared to say, would be desirable.

9. The only suggestion which it occurs to me to offer on the 9th query is founded on analogy to the Irish Registry Act, which comprises interests down to leases for twenty-one years.

10. I do not see how there can be *present* title, altogether independently of its history or deduction antecedent to what is termed the present title. I should say that a retrospective inquiry could not be safely omitted.

11. It would differ in the respect stated in my answer to the 7th query.

12. Not in my opinion.

13. I think this would be necessary, but not desirable.

14. I think this would be necessary, in order to give full effect to such a mode of registry as is referred to.

15. I do not see how this could be done, without impeding and embarrassing the transfer of the land, because I think it would lead to uncertainty as to possible claims or interests.

16. I am not sure that I fully understand the object of this question; but I should be inclined to answer it in the affirmative.

17. I think not.

18. I think all this would be imperfect for the purpose of attaining the desired object, and that it would probably clog the transfer of property.

19. No satisfactory distinction could, in my mind, be made.

20. All, if any, ought to be protected.

21. I think it should describe the interest; otherwise the object of facilitating title would not be achieved.

22. I do not see how this could be done, save by successive registries by each transferee.

23. Nothing more than a mere *claim;* otherwise the registrar must be a judicial officer.

24. I should say that the registration of the instrument under which the equity is set up would be the most effectual and simplest mode.

25. I can only say in reply to this, that such instances have not been numerous within my professional experience.

26. In my opinion this would be objectionable.

27. I think that the security of settlements and trusts would be materially impaired in the case supposed.

28. No.

29. I think not.

30. It would be necessary, as I conceive, that the registrar should have judicial authority for the purpose of effectuating some of the purposes suggested in these queries; and that is one reason why I do not concur in the expediency of some of them, because I think the registrar ought to be merely ministerial.

31. A *power* of registering would, I conceive, be sufficient.

32. The registration alone ought not, in my opinion, to amount to a warranted or parliamentary title.

33. I do not think that a registration would be effectual or useful, if confined to any portion of the title only.

34. Upon this point I am not well qualified to form an opinion, but I am disposed to answer the question in the negative.

35. I have not considered this question, and it is one too important and difficult for a hasty opinion. I can only say that the plan would be attended with great difficulties.

36. I am wholly unable to answer any portion of this inquiry.

Mr. W. P. Urquhart, M.P.

Mr. Wm. Pollard Urquhart, M.P. (Castle Pollard, Westmeath.)—Received 22*d January* 1855.

1. The affirmative of this question must be evident to every one possessing any acquaintance with the land system of Great Britain and of some countries on the continent, and the means of comparing their results.

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Mr. Kaye, in his book on the social condition of the people in different countries on the continent of Europe, says, that in those states in which a ready and cheap system of transfer of land exists, bankers frequently invest their floating capital in purchases of land which they are able to turn to cash again as soon as required. If land were as easily transferable in Great Britain as it is in those countries referred to by Mr. Kaye, it is extremely probable that British bankers might frequently prefer it as an investment to the more hazardous ones of railway shares, canal shares, and similar uncertain and dangerous speculations; but it is obvious that they cannot do this as long as the necessity for the retrospective investigation of the title on each successive transfer exists. To quote from a paper read before the Law Reform Society in May 1852: "The great bulk " of the expense of the transfer is occasioned by the investigation of the title deeds for " sixty years; for if, under the present system, A purchase an estate, and investigate at " great expense the title to it in the most careful and searching manner, with the assist- " ance of an able and experienced solicitor aided by the advice of eminent counsel, and " if A afterwards sell or mortgage the estate to B, all the expense of the investigation " of the title which was incurred for A has again to be incurred for B."

Another example of the degree to which the free transfer of land is impeded by our present laws is, that in the countries where those laws do not exist, the labouring classes frequently save a great deal from their wages for the purpose of ultimately being able to purchase small spots of land, a thing which they scarcely ever do in Great Britain: though the high prices given by the peasantry in the north of Ireland for what is termed the "goodwill" of patches of land, subject to rents equal to those which a capitalist farmer would pay for them, did they form part of his farm, wherever they think they are guaranteed by custom in their undisturbed occupation, gives us every reason to infer that they would be still more eager to purchase patches of land, were the undisputed possession of them guaranteed to them by law, and that they would save money for that purpose. Proof of the same is also afforded by the origin and existence of freehold land societies, which, in the words of Mr. V. Scully, may be regarded as an effort to escape from an unsuitable land system. Everybody, too, must be acquainted with owners of estates who would willingly exchange distant and outlying portions of their property for adjacent grounds, the cultivation or management of which they could undertake with much greater advantage to themselves and to the community, did facilities for doing so exist, but are prevented from carrying out their wishes through fear of the trouble and expense of ascertaining the titles. It is hardly credible that the evils, which necessitated the passing of the Incumbered Estates Act in Ireland, would ever have risen to such a height had the transfer of land not been impeded by the necessity which now exists for the retrospective investigation of the title each time the land is brought into the market.

3. and 4. I of course cannot answer these questions as confidently as those who have had the benefit of a legal education. It does appear to me, however, that the establishment of a public register or record to the title of the land is the first and most necessary step to facilitate its transfer. It is part of the plan contained in the very able paper "on the transfer of land" read to the Society for the Amendment of the Law, on May 24th, 1852, published in the Law Review of August 1852, and it is included in the functions of the "Land Tribunal" proposed by Mr. Scully in his bill read a second time in the Commons, June 29, 1853. Some sort of public register or record of title exists in every country in Europe where land is easily transferable; nor, indeed, have I ever seen any plan for facilitating the transfer of land that does not require its establishment.

4. and 5. The increased facility would of course be obtained to a certain extent in each of the ways mentioned in this question, but I think more in the two first than in the last. The diminution of the *expense* of transfer would be more efficacious in facilitating the sale and transfer of small lots of land than large ones. In the paper referred to, contained in the Law Review, it is remarked: "A large estate held under one title " may be divided into a great many lots. The purchaser of each lot has his own " solicitor, by whom the title is to be investigated on his behalf. An abstract of the " title is delivered to each purchaser, and there may be fifty different solicitors assisted " by fifty different counsel engaged at the same time in the investigation of the same " title to the several lots into which one estate has to be divided; and sometimes the " same counsel is consulted again and again on the same title." This remark will, I think, make it evident how much greater proportion the expense of transfer bears to the value of the land transferred in the case of small estates than in that of large ones; and it cannot but be such a very serious impediment to the free sale and purchase of the former, as to amount almost to a prohibition. It also prevents large estates being sold in the most advantageous manner. The freehold land societies, and the company proposed some years ago in Ireland, for the purpose of buying large estates and selling them in moderate-sized lots, by which a fair profit was anticipated, shows, that it is frequently more advantageous to sell an estate in small divisions, and to different persons, than to dispose of it en masse; but the proportion of the expense of investigating the title of each small lot being considerable compared with its value, for the most part precludes the possibility of this, and consequently diminishes its value to its owner.

These considerations show the impossibility of giving an exact answer to Question 6.

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5. At present the expense of sale is at first borne both by seller and buyer; but I think that, by whoever it may be actually and in the first instance paid, the greater portion of it comes ultimately out of the pocket of the former. The price which the buyer will pay for land is, except in extraordinary instances, determined chiefly by the proportion which the net profit he expects the land will return him for his *total* outlay—whether this outlay is paid entirely to the seller, or partly to the seller and partly to the lawyers—bears to the return his capital would yield him if otherwise invested, even though the greater security of the land, and the gratification of becoming a proprietor may make him content with a smaller annual interest from capital sunk in land than placed elsewhere. It is quite indifferent to him how much of his capital goes to the lawyers, and how much to the late owner of the land, nor, as long as the price of the land is in the main dependent on the ordinary interest of money, will the gross sum he is willing to expend to become owner of an estate be in any degree affected thereby. If, for instance, in any existing state of the money market and returns from other investments, he expects and is satisfied with three per cent. interest for money invested in land, he will be willing to pay 10,000*l.* to become master of an estate yielding 300*l.* per annum, and in so doing is indifferent whether he pays 9,000*l.* to the seller of the estate and 1,000*l.* to the lawyers, or pays the whole 10,000*l.* to the former. Thus, while the price of land remains the same, the portion of it received by the seller will increase or diminish inversely as that paid to the lawyers.

I am quite sure that an easy and cheap mode of transferring land would in the long run augment the sums received by the sellers, not only by the portion of that price that is now paid to lawyers, but also by the additional market value which land could not fail to derive thereby. Bentham, in a letter to Mr. Abbot, says, that the effect produced instantly upon the price of land in the part of Poland ceded to Prussia by the system of registration, was raising it from seventeen years to twenty years purchase; and that in the other parts of the Prussian dominions, where there was an extensive and detailed system of registration, the average number of years purchase of land was thirty. This, I suppose, rather exceeds the present average in Great Britain, and is considerably greater than it was at the time that the letter referred to was written—1800. Bearing in mind this example, and taking into account the great extension of the commercial spirit of Great Britain since that period, and the many ways in which land could now be turned to account, if it were more easily purchaseable, by those who had the means and the ability to do so, the estimate of some eminent authorities that land would rise eight or ten years purchase in the market, were it made transferable like stock in the funds, will not be deemed an exaggeration; I need hardly add, that the whole of the depreciation of the value of land thus caused by existing laws is a loss to the seller.

7. 8. and 9. A registry of title, I suppose, would refer merely to the original deeds of conveyance, together with the acts of settlement, wills, and entails affecting the estate for the preceding sixty years, as also the leases under which the property was held, should it be only leasehold. It would of course be possible to form a register of such, distinguished from one of assurances; and it might, and I think really would be convenient to keep the two apart. The former alone would so far simplify the forms of conveyance of land as to save a *part*, but a part only, of the search that is at present required each time the land is brought into market; but I think a great deal of its utility would be impaired if it were not accompanied with a register of the latter, or at least if the register of the latter were not easily accessible at the same time as the former. Leases of a certain number of years and certain beneficial interest, a species of property very common in Ireland, and which, as is frequently the case when they are not terminable, confer upon the lessee the powers and responsibilities of property, ought certainly to be registered.

10. and 11. I think that the answers I have given to the Questions 9 and 10 apply very much to these two questions. It does not appear to me that a registry that merely exhibits the present actual and existing title would in all cases suffice, without another registry containing its history and past deductions; unless, indeed, the same power were given to the Registration Commissioners that is now given to the Incumbered Estates Commissioners, viz., that of declaring peremptorily against all the world all the titles and all claims affecting the estates submitted to them. I do not think that a register exhibiting everything relating both to the present and actual title, and its past history and deduction that was required to be known for the purpose of facilitating its transfer, would essentially differ from a registry of assurances.

15. 16. 17. and 26. I shall answer these questions by an extract from the paper on the registration of the transfer of land that I have already referrred to: "A very large "proportion of the stock of this country is vested in trustees for others; and if any of "the parties beneficially interested desire to prevent the improper sale and transfer of the "stock, he can obtain from the Court of Chancery at a very small expense, and as a mere "matter of course, on lodging an affidavit that they claim to be beneficially interested "therein, a writ of distringas, which is lodged at the Bank of England, accompanied by "a notice stating the object of it, and thereupon the transfer of the stock is stopped. If "the trustees, notwithstanding the stop, insist on their right to transfer, notice that they "have done so is given at the bank to the party lodging the distringas, and if the party do "not within a short time, generally three or four days, obtain an injunction to restrain

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" the transfer, the distringas is removed and the transfer takes place, as if there had " been no distringas, to a purchaser, who, whether he do or do not know of the existence of " the distringas, is in no way effected by it."

Now without speaking at all authoritatively, I have never heard that this system is attended with any practical inconveniences, or that it opens a door to the fraudulent transfer of stock at the expense of parties having beneficial interests therein. Unless in answer to Question 25, evidence to the contrary should be brought before the committee, it may be assumed that the system has been practically safe for stock; and there is therefore no reason to suppose that it should not also be safe for land.

Again, to quote from the same paper, it is said, "Under the the present system nearly " all well-drawn settlements of landed estates in this country contain clauses empowering " the trustees to sell the estates and to invest the purchase money in other estates to be " settled to the same uses. The power is usually exercised with the concurrence of the " tenant for life, if living, but if dead, at the sole discretion of the trustees; and in " either case the purchase money remains under the control of the trustees until " re-invested in land. And it must not be forgotten that a very large portion of the " land of this country is held in mortgage, and that, inasmuch as under the present " system a mortgagee usually has a power of sale which he may exercise without the " concurrence or knowledge of the mortgagor, nearly all the land in mortgage is, and " has long been in a position in which it is alleged that the land cannot safely be " placed. Experience has shown that the power of sale vested in the mortgagee is " very rarely abused, and it is uniformly given without hesitation. It is further to be " observed that a very large proportion, nearly two thirds at least, of the mortgages on " land are held by persons who are merely trustees of the money, and have no beneficial " interest in it. There can be no doubt but that many millions of money are at this " moment vested on mortgage, where the mortgagees are trustees under settlement " or wills, and have no beneficial interest in the money. Such mortgagees are in fact " trustees of the land subject to the mortgage for one party, and trustees of fund secured " by the mortgage for another, and the land and the money are both unhesitatingly " placed in the position in which it is alleged that land cannot safely be put. Neither " must it be forgotten that there are nearly 800,000,000*l.* of money in the funds, " of which a full proportion, probably one half, is already in the position in which " it is alleged that land cannot be safely placed, and that millions on millions " represented by shares in railways, canals, and docks, and other public companies, are " similarly circumstanced. What has been practically found safe for them cannot be " otherwise than safe for land." I believe that a large portion of the money in the funds, railway and canal companies, and similar investments, is held subject to settlements, trusts, and equities, and that the parties interested therein have been adequately protected by the power of putting a distringas. Perhaps *at first* it would be desirable that the distringas or caveat should have the effect of altogether stopping a transfer while uncancelled, provided power were given to the owners, in certain cases, to compel the party who availed himself of it to cancel it as soon as it was made evident that his interest would still be adequately protected.

I believe that the Incumbered Estates Act of Ireland permits the sale of land subject to certain interests, and I have not heard of any inconvenience arising therefrom; and I therefore do not see why the transfer of land subject to certain interests should not in all cases be permitted. I think too that the cancelment of the distringas should be compulsory whenever it was made clear that the interest of the party who availed himself of it would still be protected; as for instance, whenever the party selling the land placed the proceeds of the sale in some investment which afforded equal valid security for the protected interest.

Parties who had a reversionary interest in land, and who might reasonably be supposed to have local attachment to the land settled on them should, I think, have the power of putting on a distringas which should *altogether* prevent a transfer, and which they could in no case be compelled to cancel. For instance, if a widow were left in the possession for a life of a property settled on her husband's son, it certainly would be hard if she with the consent of her trustees had the power of selling an estate to which the latter might have strong local and personal attachment; by which perhaps he might be more influenced than by the actual return it might yield him as an investment. But if land were more easily transferable and if sales of estates were more common than they are at present, I think that in most well drawn wills and settlements clauses would be inserted either allowing or forbidding the trustees to sell an estate without the consent of a party having a reversionary interest.

At present, as already observed, clauses empowering trustees to sell are contained in most well-drawn wills and settlements affecting estates; and I believe that the trustees cannot effect a sale unless such clauses are expressly inserted. Perhaps it would be an improvement, if in the drawing up of all future clauses and settlements it were understood that the trustees were to have the power of selling an estate under the same liabilities as at present, without the consent of the party having a reversionary interest, unless there were an express stipulation to the contrary. A distinction would soon come to be made in wills and settlements conferring reversionary interests between

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those that conveyed the reversion of an identical property, and those that contained the reversion of merely its money's worth.

There is another distinction between land and stock to which I am not aware public attention has been directed, viz., that the latter has a market value which is known every day of the year, and the former has not. Even public valuations or valuations made by experienced land agents appointed by private individuals do not always afford a fair test of what an estate may sell for at any one time, as what may be called fancy or accommodation prices are often given for properties. It might appear then, that, if all parties having reversionary or other interests in estates had not the power of absolutely stopping a sale by distringas, there would be no way of protecting their interests by preventing trustees, out of consideration of some private advantage to themselves, selling a property at a price which, though it might be called a fair valuation price, was considerably less than it would really fetch. The best answer that can be given to this, however, is, that in many cases trustees have this power now, and almost all mortgagees have it, and we do not hear of its being thus abused.

29. For the mere purpose of registering the title it would not be indispensable that the registrar should ascertain the accuracy of the description and the identity of the land; but to make the registry of the title efficacious in facilitating its transfer it seems to me that it certainly would be indispensable. To quote from a paper read before the Law Reform Society in May 1852, "One of the most obvious differences between land and stock," which renders the transfer of the former difficult compared with that of the latter is, "that there is an individuality in the former which does not exist in the latter. The "purchaser of the land buys a specific thing in a particular parish or place, marked out "by metes and bounds, and distinguished from every other thing. The purchaser of stock "buys a certain quantity of the article, and is thereupon registered as the owner of that "quantity; but his 100*l.* in a particular fund differs in no respect from the 100*l.* stock in "the same fund of any other owner. There is no individuality in either. If the two "owners exchange stock with each other no perceptible alteration is effected. Another "important difference between land and stock as to the facility of transfer is, the detailed "particularity of description required for the former, which is not needed for the latter. "A field must be identified by the description of quantity, boundary, parish, and county, "whilst the stock is inscribed in the registry as so many pounds, shillings, and pence "belonging to the owner."

To obviate this difficulty it does appear to me absolutely indispensable that the registrar should ascertain the accuracy of the description and the identity of the land.

31. As it would be contrary to custom and to British notions of justice to compel every owner of an estate to make a full disclosure of his affairs and encumbrances, the registry ought (at first at least,) to be only voluntary. If, however, it was found that the registration really was efficacious in greatly facilitating the transfer of land, increasing its fee simple value, and so enhancing the credit of its owner as to enable him to get money at less expense and at a lower rate of interest than he would otherwise do, I cannot but think that most landlords would ere long avail themselves of it. If the system once came into extensive operation, the owner of an unregistered estate would find his credit more depreciated by not registering the title of his estate than might at first be thought, seeing that in such a state of things, the very fact of his estate not being registered would be supposed to imply either that his title was insecure or that his circumstances were too embarrassed to admit of disclosure. As in Ireland most of the estates that were so embarrassed that their proprietors would fear a disclosure of their affairs, have been sold, there now are probably few landowners in that part of the United Kingdom who would for that reason object to having the titles and incumbrances of their estates registered. It was remarked in a recent paper read before the Law Reform Society that there were few owners of landed property who had not occasion at some time or other to raise money on their estates. If the having the titles and incumbrances of their estates registered would be ultimately the means of facilitating their raising money in the manner suggested by Mr. Pretty in 1850, it is probable that ere long they would all avail themselves of the advantage so held out to them.

32. and 33. I do not think that the registration could in *all* cases be made to confer *at the outset* a warranted or parliamentary title. To quote again from the paper referred to above: "It will probably be admitted to be impossible, having regard to the enormous "expense and delay of such a proceeding, and to the difficulty and danger of acting on "ex parte evidence at once peremptorily, to ascertain and record against all the world, "through the medium of Commissioners or otherwise, the state of the title to ownership "of every acre of land and every incorporeal hereditament throughout the kingdom." It is true that this has been found possible in the Incumbered Estates Court in Ireland; but in the first place I believe (though I speak with the diffidence of one who has not had a legal education), that there is less practical difficulty in ascertaining a title in Ireland than in England; and in the next place, that Act must, to a certain extent, be regarded as a remedy for a desperate state of things which might justify a proceeding somewhat too arbitrary to be universally adopted in a country the prosperity of which is mainly dependent upon security, and the eschewing even any appearance of injustice. A great step would certainly be made, even if the provisions of the registry related only to the title subsequent to its commencement. But it seems to me that although the registration could

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not, in all cases at least, confer a warranted parliamentary title, it might generally grant a certificate or make an entry of all the then existing estates, rights, and interests, both legal and equitable, on the land, including, of course, all jointures, judgment debts, mortgages, annuities, claims, and incumbrances of every description to which the estate was subject, and thus ascertain and make a note of the degree of insecurity or obscurity in which every title was involved. Should transfers of land by means of the Registration Court become frequent, the Court might undertake to insure to the purchaser of every estate an indisputable title to the estate so bought, or to return him the purchase money should he afterwards lose his estate in consequence of the title being bad, on the payment of a certain sum at the time of the purchase—said sum, of course, to vary inversely as the security of the title. This sum, though paid by the purchaser, would in reality be deducted from the sum which he would otherwise pay to the seller; and as it would probably in no case exceed the expense that, without the system of registration, would be necessary to satisfy the purchaser that the title to the estate was secure; or, if it were not secure, the amount of depreciation in the market value of an estate in consequence of said insecurity, (which sums, as I have already said, appear to me to be in reality deducted from the net sum realised by the seller), the paying of it could not be objected to as imposing a fresh tax on the transfer of land. Indeed, so far from its operating as a fresh tax on the transfer, it appears to me that the degree of security afforded thereby to the title of the purchaser, and the certainty of the estate being rendered thereby so much more easily transferable, would make such an addition to the value of the land as would far more than compensate the vendor for any deduction that the necessity imposed on the purchaser of paying the premium for insuring the title would make from the net price received by him for his land. And as all uncertainty relating to the title could only be caused by transactions prior to its registration, extending over a progressively diminishing period of time, it is obvious that the sum necessary to ensure the title of any estate would become less and less every year, and finally vanish.

34. It appears to me that Clause 15 and Clause 27 of the Incumbered Estates Act contain the outline of machinery embracing peculiar advantages for the introduction of a system to facilitate the sale and transfer of land. In the former of these it is enacted that "the Commissioners are to be a court of record, and shall have all the powers, "authority, and jurisdiction of a court of equity in Ireland, for the investigation of title, "and for the ascertaining and allowing incumbrances and charges, and the amount due "thereon, and settling the priority of such charges and incumbrances, and the rights of "owners and others, and generally for ascertaining and allowing the rights of all persons "in any land or lease in respect of which application may be made under this Act, or in "the money to arise for sales under this Act." It surely would greatly facilitate the free transfer of land if the power of the Commissioners were extended to all estates, whether incumbered or not, the titles and deeds affecting which were submitted to them; for there is no good reason why their functions should be confined to estates which are incumbered to an amount equal to and exceeding half their value. Their capacity for dealing with unincumbered estates appears to be recognized in Clause 46, which permits them to authorize the exchanges of lands not subject to be sold under the Act. If the Commissioners were able to make out a clear and undisputed title to any unincumbered or only slightly incumbered estate brought under their examination, their conveyance might be sufficient to pass the fee-simple and inheritance of the lands thereby expressed to be conveyed, subject to such tenancies, leases, and underleases as shall be expressed or referred to therein as aforesaid, as in clause 27 of the Incumbered Estates Act. And it appears to me that they might also, as now, retain sufficient of the purchase money to pay off all incumbrances, and then transfer the estate free from all such incumbrances; or where the purchaser chose to buy the estate subject to those incumbrances, the Commissioners might let them remain a charge on the estate as before. By Clause 23 the Commissioners have the power, should they think fit, to make the sale subject to any annual charge affecting the land, or part thereof, or to any such apportioned part of such annual charge as they may think fit, and where such land or lease, or part thereof, is subject to any incumbrance, under the terms of which the incumbrancer cannot be required to accept payment of the principal money before the expiration of a term of years unexpired, such sale may, if the Commissioners think fit, be made subject to such an incumbrance. The vesting the same or analogous powers in any new Commissioners would enable them, in cases where it seemed desirable, to effect the sale of slightly incumbered estates subject to certain charges of the same description. But if land were more easily transferable than it is at present, it is probable that the incumbrances thereon would be much fewer in number, and of a much simpler nature than at present, and the necessity of selling land subject to any incumbrance, except a life annuity, would very soon cease.

35. I have examined with considerable attention the system of land debentures which has existed in Prussia since the time of Frederick the Great, and the full details of which are given in a work entitled "Darstellung des Wesens der Pfandbriefe, von Carl Ludwig Heinrich Rabe," published at Halle and Berlin in 1818; and also by another German writer, Bulow Kummerow, in two pamphlets, published at Berlin in 1843 and 1847. I will state here some of the advantages which are enumerated by the latter writer as having resulted from their use in Prussia, and which I think would equally follow their introduction into the United Kingdom.

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They effectually establish the credit of every owner of real property, inasmuch as he is enabled, by their instrumentality, to command a certain sum of ready money in proportion to the value of his estate; and the proprietor is free from having any loan on his estate suddenly recalled. Every owner of property is furnished with the means of improving his estate, and paying off, if advisable, any joint partners or coheirs thereof that may exist. As the land debentures, which are given to the capitalist in return for his loan, rest on the security of the property of all the members of the companies, which for the most include all the landowners of the respective provinces, they lose the character of private loans; and as they pass from hand to hand like paper money, they have a wide circulation, and put the most unfavourably situated localities on a par as regards credit with those more favourably situated; by their means the unprofitable accumulationl of capital in the hands of people unable to turn it to account for themselves is prevented, and as they can always be cashed in the money market, they afford an excellent temporary investment. The capitalists thereby enjoy a better security, both for their principal and the punctual payment of the interest due thereon, than they could from any loan made to a private individual.

The state of things which existed in Prussia previous to the introduction of this system, as delineated by Carl Ludwig Heinrich Rabe, is so like that which prevailed in Ireland subsequent to the famine years, and shows so clearly its advantages in remedying a certain class of evils, that it will not be irrelevant here to quote his description of it. It is nearly as follows :—"In consequence of the events of the seven years war, the value of all landed property was unduly depressed; by reason of the great number of estates that were brought into the market, all probability of its recovery seemed to be precluded. This depreciation caused the ruin, not only of the embarassed landowners, who were obliged to part with their estates at very inadequate prices, but too frequently also of the creditors themselves; inasmuch as it often happened that the estates on which they had lent money did not sell for a sum sufficient to satisfy their claims. Capitalists were in consequence very distrustful of lending their money, even on good security, and generally "applied to the lawyers to find investments for them; the lawyers, having thus acquired "a command of all the floating capital of the kingdom, would procure no loan without "charging a large commission, and, tempted by the hope of getting this commission, they "frequently advised capitalists to recal their loans, thereby adding to the embarrassment "of the landowners. Consequently all the agriculture improvement ceased, while much "capital lay idle."

Perhaps the advantages that may be expected from the system of land debentures are best summed up in the words of Bentham :—"Benefit to landlords,—benefit to every body in general, but to those who are among the people's very worst enemies."

The land debentures in Prussia are issued by companies of landowners which began to be formed in its different provinces in the year 1769 and the following years. In some of the provinces it is optional with the proprietors to belong to them or not as they please; in others they are obliged to do so, whether they wish to avail themselves of their advantages or not; or, in other words, all the property of the province goes security for the money borrowed by the companies. For the money borrowed the companies issued deeds of mortgage, called debentures, somewhat resembling the deeds proposed by Bentham under the name of land pledges, on the joint security of the estates of all their members. The different members of the company are able to borrow money from the company, on the security of their own properties, to the extent of a certain proportion, generally one half of their value, for which they are charged a small commission, varying from one fourth to one fifth per cent., and on which they pay an interest exceeding that paid by the company by a small additional per-centage, sufficient to cover the expenses of management. About one sixth per cent. additional interest has generally been found sufficient for this purpose.

The notice required from any holder of a debenture wishing to be paid back his principal, is generally six months. Some of the debentures are unconvertible; they have, however, generally been negotiable at any time, and for the most part brought even a small premium in the money market. The only time that they continued at a discount was during the late wars when Prussia was overrun by foreign armies, a period at which any securities affecting the land must have been depreciated. In the majority of them the interest is payable to the bearer, and they pass from hand to hand like bank notes.

In a pamphlet on this subject published in 1853, I have suggested the establishment of a land credit company in Ireland, authorized to issue debentures in the following manner. Let there be constituted a court of paid commissioners sworn to secresy, whose business it shall be to examine into such titles to estates as are voluntarily brought to them. A continuation of the present Incumbered Estates Commission might suffice for that purpose in Ireland. A pamphlet entitled "Outlines of a Plan for insuring the Stability, and reducing the Expenses of investigating Titles to Landed Property by means of their official Investigation and Certification," by Henry Tyrwhitt Frend, barrister-at-law, shows how this object might be accomplished in any part of the United Kingdom.

Let the commissioners on the completion by them of the examination of each title, grant a certificate descriptive of the precise state of all the then existing estates, rights, and interests both legal and equitable on the land. A company similar to the German land credit companies might then be formed by the owners of all those estates the titles

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and circumstances of which were found to be such as would afford good security for a loan sufficient to discharge existing encumbrances.

To give a company of this description a fair start, it is extremely desirable that it should be formed, and that,at first at least, its affairs should be managed, under the superintendence of the government. If the government were to guarantee the loan that would in the first instance be required to pay off the existing encumbrances on the estates of its different members, the confidence that would thus be imparted to it in the eyes of the public would enable it to raise the money at a somewhat lower interest than it could otherwise do. The very fact of its being *called* a government company might cause many proprietors to belong to it who could not be induced by any other means to allow their estates to be even nominally responsible for the debts of other people. The usual objections against government interference would not be applicable in this case. By so doing the government could not be said to be favouring or patronizing one interest at the expense of another. Its superintending the formation of the land company, and guaranteeing the loan necessary to set it going would be merely tantamount to its giving the public an assurance that it had freed its property from the legal technicalities which had hitherto prevented land from being more readily available as a security for a loan, and that the circumstances of the estates of its members were such as to preclude all possibility of risk,—an assurance which could hardly come from any other quarter, nor be given by them in any other manner. Nor would this proceeding on their part cause any diversion of the national capital or any tightness in the money market. For as in this instance the loan raised under the guarantee of the government would be applied to pay off existing incumbrances, it would of course set free and bring into the money market a corresponding amount of capital which had hitherto been locked up in these incumbrances.

The company might afterwards undertake to lend, to any of its members requiring it, a sum equal to the difference between the loan given to him to discharge the previously existing encumbrances and half the value of his estate. Such member would of course be required to give adequate legal security to the company for both the former and the latter The company being the sole creditor of his estate, and the title and circumstances of it being fully known to them, the deed necessary to confer this security might be made at a small epxense without any delay, and in a form as simple as that of the German land debentures or of the deed of land pledge proposed by Bentham in his review of Humphrey's "Real Property Code."

There are of course several modes by which the company might raise the capital sufficient to make these advances to the proprietors who needed them. Perhaps its simplest way would be to raise in the first instance a sum equal to half the value of its property, and to invest in public securities that portion of it which was not required to pay off existing encumbrances, till it was needed for further advances.

This short plan of land debentures, is, of course, wanting in many details, some of which I have considered in the pamphlet from which I have taken it, and others which will doubtless occur to to those who have had practical experience in conveyancing. But it is hoped that it may be of some use in suggesting to the latter a mode by which a great public benefit may be accomplished.

I have no *special* information to give about the Ordnance maps of Ireland. They do seem however to me to possess all the desiderata of a map such as was desired by the great law reformer Bentham, when he penned the paragraph, "Give me, said Archimedes, give me but another place to stand upon, and I will give motion to the earth. Give me say I, give me but a map to point to, and I will give rest and quiet to all who inherit this our portion of the earth's surface."

To illustrate the advantages of the present uniform valuations of Ireland for the institution of a company to issue land debentures, I will quote what a German writer says about the necessity of a similar valuation in the different provinces in Germany to secure the efficiency of the land credit companies: "For the purpose of making loans it is not so necessary to ascertain the temporary condition of a property as its least exchangeable value. This chiefly depends upon the chemical and physical composition of the soil, on its locality—on the climatic influences to which it is exposed—finally, on the vicinity or distance of the market, and on the higher or lower wages of the labour bestowed on it." The following description of Mr. Griffith's valuation, given in Ferguson and Vance's book (p. 81,) shows, that it is adapted to the above conditions: "The almost universal character given of Mr. Griffith's valuation has been, that as a whole it was executed on truly correct and scientific principles, and that it was a good uniform valuation at a low rent. However, being intended for general purposes of mere taxation, it could not properly, and did not profess to enter into any consideration of what might be called the commercial or the accommodation value of the lands; so that it might estimate two adjacent fields very differently, according to the intrinsic value of their soils; and the field that was inferior might, according to this estimation, be the more valuable of the two for letting." In the same book I also find it stated about Mr Griffith's valuation, "Experienced valuators in England almost uniformly adopt two different scales of valuations for estates; one for the purpose of letting, which is generally something intermediate between the actual value of the farm in its present condition and

its future improvable value, estimated from its capacity for improvement; and another of the fee simple value for the purposes of sale, which is at least twenty-five per cent. lower than the renting value; and for this latter purpose the original valuation of Mr. Griffith would appear to be capable of useful adaptation, and has been generally used and relied on, we believe, with satisfactory results in the extensive sales effected by the Commissioners for the Sale of Incumbered Estates." Thus Mr. Griffith's valuation appears to possess all the requisites which a person experienced in the working of the Prussian land debenture system asserted to be required for its efficacy in that country.

Mr. W. P. Urquhart, M.P.

W. Pollard Urquhart.

Mr. John Locke (Incumbered Estates Commission, Dublin).—24*th January* 1855.

Mr. J. Locke.

The sale and transfer of lands and tenements in Ireland would be facilitated, and expenditure of time and money economized, by public registers, to serve as a definite record of title.

Every record of title on the register to be accompanied by a tracing, or ter-chart, from the Ordnance survey; so that, in fact, a Land Index, founded on the basis of that survey, and accurately following its nomenclature, would be the prime standard of reference.

To render this plan more comprehensive and clear (as also to suit the objects of the tenement valuation), the Ordnance sheets of cities and towns, and indeed of all densely peopled districts, should be enlarged to the scale of 60 or perhaps 80 inches to a mile. The present scale is 6 inches, excepting Dublin city, which is 60 inches. Independently of the purposes of registration, the facilities these enlarged maps would afford for all arrangements with reference to division and improvement of holdings would prove a vast benefit both to landlords and tenants.

By some such plan of registry, land and immoveable property might be made easily and cheaply negotiable, in large or small parcels, each record of tenure, upon sale, transfer, or demise, being cancelled by an appropriate stamp, so as not to render illegible the original entry, and then a new certificate to be issued by the Registrar. Every certificate issued from the registry offices to be considered conclusive evidence of the registry itself, and *primâ facie* evidence of the validity of the transfer.

The difficulties and expenses of a general registration would certainly be very great, especially in the origination of the scheme; but the system would self-adjust itself in course of its working, and might be made instrumental in economizing other civil establishments and modes of public procedure, by affording means of reliable information to Poor Law officials and to tax collectors, and serving as a basis for government inquiries respecting the industrial and social statistics of the country.

Four years since it was suggested in a pamphlet ["Ireland—The People, the Land, and the Law,"] by the writer of these observations, that the machinery of the Incumbered Estates Commission might be made serviceable in carrying out the plan of a Land Registry by map, and if the system had been adopted from the commencement of attaching a tracing from the ordnance survey to the memorial lodged of each conveyance, we should now possess a registry by map of two million acres, or about one tenth of the area of Ireland, over which proportion the landed proprietary has been increased five-fold by the results of the sales under the Commission.

A registry system, such as suggested, would render necessary the establishment of a judicial tribunal for completion of its functions; and for this the Incumbered Estates Commission presents a fair practical model, in the economy, amount, and completeness of the labours, accomplished within a comparatively short period of time.

The writer of these few observations feels the impossibility of establishing a comprehensive and complete registration system in all its diversified relations, except by gradual and carefully considered steps; and, avoiding the presumption of theory, he has endeavoured to keep within the limits of his own experience, and to suggest one sure step in the right direction.

January 1855.

John Locke,
Incumbered Estates Commission, Dublin.

Mr. W. Neilson Hancock LL.D. (Barrister, Dublin).—25*th January* 1855.

Mr. W. N. Hancock, LL.D.

1. There can be no doubt that the sale and transfer of land is greatly impeded, and is rendered much more expensive than it ought to be, by the necessity which exists for the retrospective investigation of the title on the occasion of each successive transfer. Such a waste of highly-paid labour is an unnecessary burden on the owner of land.

2. A registry of the title to land, if at all properly arranged, would facilitate the disposition of land, and render such disposition much more secure than at present. There would be little delay or expense in conducting a transfer, and consequently the inquiries indispensable for security would rarely, if ever, be dispensed with. A registry of assurances can never give the same facility of transfer or security to a purchaser, a tenant, or a subsequent incumbrancer, as a registry of titles, for in a registry of assurances all ambiguities of phraseology and all legal difficulties of construction in any deed are impressed on the title to the land, and thus affect all subsequent interests as long as the particular deed remains in operation.

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3. That the sale and transfer of land would be facilitated by establishing a public register of title can be demonstrated by the case of railway shares. They are primarily interests in the fee of the land on which the railway is constructed. If all estates in land were placed under arrangements for registry and transfer similar to those relating to railway shares, the present unnecessary delays and expenses of transfer of land would be entirely obviated.

4. Under a proper system of registering titles the increased facility of sale and transfer would be obtained,—

1st. By avoiding the investigation of the past title;

2ndly. By diminishing the expense of transfer;

3rdly. By making the buyer more secure;

And, lastly, by diminishing all delay of transfer, which is perhaps the greatest inconvenience and burden of the present system.

5. The present high expense of transfer falls almost entirely on the seller, so that he would be the greatest gainer by any diminution of that expense.

The seller would, however, gain much more than this; for the effect of absolute title and transfer by entry on the register would most probably be to raise the selling price of land, having such advantages, several years' purchase above the price of other land.

In short, to whatever extent the public appreciated the value of the new system, the seller must gain, as the competition of buyers would raise the price. The buyers, again, would gain by finding the real advantages of the system much greater than the common estimate.

6. Where the investigation and inquiries into title are honestly conducted to the extent of affording really adequate security to the purchaser or lender, about nine tenths of the expense of a purchase may be taken to arise from such inquiries and the matters connected therewith.

7. The case of railway shares, to which I have already referred, shows that it is perfectly possible to form a register of title as distinguished from a register of the various deeds and assurances under which the title has been derived.

8. 9. In order that a register of title should be instrumental in simplifying generally the title to land and the forms of conveyances, it would be necessary to make some very comprehensive yet simple changes in our law of real property. These I will briefly explain.

1. All settlements of real estates should be required to contain, what many well-drawn settlements now contain, a power of sale and a complete leasing power. Both these powers should be vested in the same persons, ordinarily two in number, one being the tenant for life or some one named by him, and the other being a trustee selected to represent the wife, children, and others interested in the settlement.

2. All mortgages and other charges affecting land should be deemed to be subject to the preceding powers of sale and leasing, with the proviso that there should be a third trustee, named by the first incumbrancer, or chosen by the creditors, associated with the other trustees. This would be merely making mortgages with powers of sale universal, and adopting the principle which for five centuries has prevailed in the Scotch Law, by which bonâ fide leases at the best rent without fine take precedence of all incumbrances.

3. The present principle of treating a trusteeship as an estate, and not as a personal office, should be abolished. There should be no survivorship, nor devolution of a trusteeship on real or personal representatives. Upon the death or other vacation of the office of trustee, the remaining trustees should have no power to act until a new trustee had been appointed by the parties, or, in default, by the Court of Chancery, to represent the tenant for life, members of the family or incumbrancers, as the case might be.

4. Instead of the entry of *lis pendens*, or the appointment of a receiver over property, parties now entitled to enter a *lis pendens* or to obtain a receiver should have a power to apply to the Court of Chancery to appoint an official trustee, resident in the county where the property was situated, who would then be entered on the register as a trustee of the powers of sale and leasing; the management of the property could thus be carried on by an agent approved of by him and the other trustees, and the Court of Chancery need only be resorted to by way of appeal from the management of the trustees.

The Court of Chancery should also be empowered in other cases of complicated interests to entertain applications for the appointment of special trustees. But, subject to the cases thus provided for, there should usually be not more than three persons registered as trustees of the powers of sale and leasing with respect to any land.

5. In order to pass from our present system to a register of titles, it would be necessary to create a jurisdiction in commissioners, (who might be styled Estates Title Commissioners,) applicable to all land, whether incumbered or not, similar to that of the Incumbered Estates Court in Ireland, by which an absolute or parlia-

mentary title to the land, subject to certain leases or tenancies, should be declared to be in the owner in fee, or in the two trustees or three trustees, as the case might be.

6. It should be provided that a simple entry in the register, by the owner or trustees, as the case might be, should transfer the absolute title to a purchaser, all claims and interests previously affecting the lands being transferred to the funds arising from the sale; and, in like manner, that a lease by the owner or trustees should be as absolute as the leases confirmed by the Incumbered Estates Commissioners.

With the above changes in the law, a convenient and efficient register of title could be readily constructed. It would necessarily contain only the names of the owner and trustees who had absolute title, and the leases and tenancies confirmed by the Estates Title Commissioners, together with all subsequent absolute or parliamentary leases made under the power of leasing.

Besides the register of title, there should be in the same offices an entirely distinct register, including incumbrances, settlements, and wills, on a plan similar to that adopted in Belgium. This register should not, however, in any way affect purchasers or tenants, but should only bind the parties who created incumbrances and settlements, their heirs and personal representatives, and the trustees for incumbrancers or the family. The distinct register of incumbrances would be of great use in regulating the distribution of the money arising from a sale, and in determining all questions of priority amongst incumbrancers, but it would not in any way complicate or impede the sale or leasing of land.

The registry should, I may observe, be in all cases in duplicate; first in a local office, and then an authenticated copy transmitted to a central office in the metropolis. The local office should be in each county town or in each Poor Law Union. In this way security would be provided against any destruction of a part or the whole by fire or outrage, and a check would be provided against fraudulent alterations of entries.

Such a system of registry would provide for all the purposes for which property in land exists. It would, in the first place, afford both to the owner and tenant simple and perfect security, so far as title is concerned, for the outlay of their capital in the production of human food and the construction of human habitations.

Secondly, entails and family settlements would have that reasonable amount of security which they now have in all cases where powers of sale and leasing powers are inserted, whilst no carelessness of the solicitor or conveyancer, and no ignorance or obstinacy of the parties to the making of the settlement, could place these institutions at variance with the interests of the community at large.

Thirdly, incumbrancers would have that security and information in every case, which the parliamentary title and conveyances of the Irish Incumbered Estates Commissioners now afford in the cases of property sold by that Court. They would also have their rights protected by a trustee to represent themselves.

Lastly, the Guardians of the Poor and other bodies having powers of local taxation, and Commissioners for the Income and Succession Taxes, would have the information which they require for the discharge of their duties furnished to them in a perfect and inexpensive manner.

10. It is, I think, essential to a proper register of title that the present actual and existing title should alone be binding on purchasers and tenants.

11. Any deduction or history of the title which the register might disclose should not affect purchasers nor tenants, but should only affect the trustees for sale, or persons getting possession of the funds arising from a sale.

12. Upon the plan I have explained, all forms of ownership, except those admissible on the register of titles, would be in the nature of trusts.

13. Equitable interests and trusts would not, on such a plan, bind or affect the title of a registered purchaser or of a tenant, unless such interests were of their own creation.

14. Equities and trusts should be allowed to confer a right against the land whilst in the possession of the owner who created the trusts, or in that of his representative. When the land was sold, the equities and trusts should be transferred to the funds arising from the sale, and so the purchaser would take the lands discharged of the trusts.

15. Trusts and equities intended to affect the registered owner could be protected on the register of titles, on the above plan, by the trustee for the family settlement, or by a special trustee (if allowed by the Court of Chancery), and then no valid sale or lease could be made by the owner without the assent of the trustee.

16. The existing system of settlements, by which the limitations and trusts of the settlement modify and become part of the title, would be unchanged under a simple register of title, so long as land continued in the possession of the trustees of the settlement. Upon a sale, these limitations and trusts would attach to the funds arising from a sale.

17–23. I do not think that settlements, trusts, and equities would be as well protected by any plan of distringas or caveat as by the system already explained of having a

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trustee to represent beneficiaries. And if that system were adopted, a distringas would only be necessary pending an application to appoint an official trustee, or to remove a trustee for misconduct. I therefore give no further answer to the questions about the distringas.

24. Upon the system I have explained, equitable interests and trusts would be protected by a trustee, without whose assent the registered owner could not alienate the land.

25. I do not consider the instances of misappropriation or misdealing by trustees of stock or money, involving loss to their beneficiaries, frequent or numerous. The cases which do occur arise chiefly from the defect I have noticed in our laws respecting trusteeship, by which it is looked upon as an estate rather than a personal office. When one trustee dies, the survivor has the same control over the trust funds as over investments of his own. This should be obviated, by requiring the appointment of a new trustee previous to any transfer of stock or money held in trust.

26. I think it essential to a satisfactory system of registration of title to vest the ownership, both legal and equitable, in trustees, with powers of sale and leasing, the security of the beneficiaries to depend on their always having a trustee to represent them.

27. I do not think that the security of settlements or trusts would be unduly impaired by their ceasing to bind the title and follow the land, and depending for their efficacy, as against the land, upon the character of trustees selected by the beneficiaries. The transfer of land is usually known to tenants and other persons in the locality, and is therefore less subject to fraud than transfers of stock. The security would be increased by having the transfer recorded in the local office first, as I have suggested.

28. If the registry of title were coupled with a well-constructed public map, both the accuracy of the register and the security of purchasers would be increased. A public map is, however, by no means indispensable to a register of title, as such a register could be based, as in some continental states, on descriptions similar to those now used in deeds. Such a system would necessarily have, so far as descriptions of parcels are concerned, as much accuracy as either the present English or Irish system.

In introducing a registry of title it is important to bear in mind that the formation of a register ought ordinarily to precede the construction of a public map, just as the rental usually precedes the survey of an estate. It is, in fact, impossible, without a register of descriptions, to construct a proper map. Consequently, to postpone the introduction of registration by title until a perfect public map has been completed is to postpose it indefinitely.

Inattention to this circumstance has led to the result, by no means creditable to our legislation, that such an important measure as Sir John Romilly's Act (13 & 14 Vict. cap. 72.), for amending the registration of assurances in Ireland, passed in 1850, has to the present hour remained a dead letter. The Lords of the Treasury were empowered to have a land index constructed for each county in Ireland, and when the maps and indexes were complete the Act was to come into operation. So far as the public are aware, it does not appear that the index of a single county has ever yet been commenced.

29. The description of the premises would be determined in the first instance by the decision of the Estates Title Commissioners. The registrar would have to ascertain the accuracy of the description and the identity of the land only in case of a division of the lots originally determined.

30. The appointment and removal of trustees might be entrusted to the chief registrar; and this course would in the first instance be desirable, as such proceedings should be entirely free from law taxes. Besides, the introduction of a new system is generally more efficiently carried out by officers specially selected for the purpose. The officials of old tribunals sometimes defeat important changes, by fanciful distinctions and constructions, and by vexatious restrictions.

31. No title should be entered in the register of titles until it had been made absolute or parliamentary by the decision of the Incumbered Estates Commissioners or the Estates Titles Commissioners. After such decision, registration should be compulsory.

32. Upon the plan I have explained, the commencement of absolute or parliamentary title would be, not the act of registration, but the decision of commissioners having jurisdiction similar to that of the Incumbered Estates Commissioners in Ireland. The claimants, and the nature of their rights, would be ascertained by investigations similar to those now made by the Incumbered Estates Commissioners in Ireland, and would be set forth in their decision.

33. If the provisions of the registry related only to titles subsequent to its establishment, sixty years would elapse before any land would be perfectly transferable.

Answers to Supplemental Questions.

34. The present circumstances of Ireland render it peculiarly easy to introduce the system of registering titles which I have explained.

In the first place, the proceedings of the Incumbered Estates Court have been pre-eminently successful. The Irish public has become convinced of the advantages of abso-

lute title. In the majority of advertisements of money to lend in the Irish newspapers the paragraph now occurs, "parliamentary title preferred." Under such circumstances, the extension of the jurisdiction of the commissioners in such a manner that an owner could get his title confirmed without selling his estate would be a most popular measure.

The existing register of deeds affords to the commissioners the same facilities for exercising the extended jurisdiction proposed to be conferred on them which it has done already in the case of sales.

The registers of deeds and judgments also afford to all existing claimants great security that their rights will be fully considered and ascertained by the commissioners, as every decision conferring absolute title would be based on an investigation founded on a negative search.

The Ordnance survey is complete for all Ireland, and affords the greatest facilities for having the descriptions in deeds laid down upon it, so as to construct in a few years a perfect register of title based on a public map.

The uniform public valuation is the basis of local taxation, and being founded on the Ordnance survey affords a ready means of connecting title with taxation, and showing a purchaser the scale of taxation.

35. The system of registration of title would naturally lead to a system of mortgages or charges transferable by entry on the register of incumbrances. As owners should be allowed to issue contemporaneous mortgages, they might in this way issue transferable land debentures. The security of these debentures would, on the system I have explained, rest chiefly on the trustee for creditors. If the manager of a joint stock bank were selected as trustee, and if the debentures were all endorsed and guaranteed by the bank, they might be found a convenient security by the public.

It seems more probable, however, that the system I have explained would throw the trade of lending money on land into the hands of bankers, and that they would keep the mortgages in their own hands, and give deposit receipts for the money intrusted to them.

The lowering of the rate of interest on loans on land which would result from the improved system would diminish the inducement which the public now have to transfer their money from deposit receipts to mortgages.

The greatest condemnation of the existing system of lending money on land is the reluctance which bankers, the natural traders in loans, have to lend on mortgage or judgment. The security which they refuse, careless trustees, ignorant people who have savings, and widows and others who have some small provision, are advised to accept, and in this way the whole risk of bad security is thrown on the classes least able to bear it. A return of the incumbrancers who have not been paid by the sales in the Incumbered Estates Court would disclose the calamities that have fallen on puisne incumbrancers from the present system.

Notwithstanding the extent of these evils, I am not prepared to recommend that the debentures should contain any certificate as to value from the Estates Title Commissioners, or that they should be in any way guaranteed as to value by public officers.

A judicial tribunal can guarantee title, because it is an absolute question to be decided once for all; but no certificate of a public officer can relieve the lender from the necessity of watching changes in value.

Mr. Scully, in his "Irish Land Question" (p. 8), mentions a case in point. The lands of Mantlehill in the county of Tipperary were valued by public officers, in 1842, at 663*l.* a year. On an appeal before the assistant barrister, in 1850, the valuation was reduced to 245*l.* If debentures had been issued in 1842, up to ten years' purchase, they would, in 1850, have been worth only 14*s.* in the 1*l.*

The tendency of any system of debentures is to prevent the lender watching these changes in value. It appears * from the history of Lord Audley's estates at Skibbereen, that on a speculative estimate of the value of his estate, supported by the false statements of the promoters of a mining company, he raised 15,000*l.* by debentures, after his property was incumbered beyond its entire real value. On its sale in the Incumbered Estates Court, not a single holder of a debenture was paid.

Then, to take the case of a public body: the corporation of Belfast have, under parliamentary powers, issued debentures for 200,000*l.*, charged on the rates; they have besides raised 80,000*l.* alleged to e secured by the value of the building ground in their hands; on their creditors demanding payment, they refuse immediate payment, as they say that their building ground, if sold compulsorily at once, will not bring its full value, —that, if the sale be only postponed, the full value will be realized; now, if an extensive permanent change in the flax trade should retard the hitherto extraordinary progress of Belfast, and if no further increase of the town should take place, this building ground would sink to the value of town parks, and the lenders of the 80,000*l.* might be ruined. How could a public officer fix the value of such building ground, and warrant it to the public?

* See the case of Pike *v.* Vigers, 2 Drury and Walsh's Reports, p. 1. See also "*The Causes of Distress at Skull and Skibbereen during the Famine in Ireland.*"—Transactions of the Dublin Statistical Society, vol. ii.

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The tendency of the public to trust implicitly where there is even the name of public security or guarantee is shown by the case of Savings' Banks. Notwithstanding the failure of the Cuffe Street Savings' Bank in Dublin, and that of others in England and Ireland, the general belief is still prevalent that the depositors have public security for their money, although the fact is they have only a very limited amount of security from the managers to look to. The Government is only responsible for what the managers pay over, and not for what they receive.

From the doubts created in my mind by the considerations suggested by the cases I have referred to, I am not prepared to recommend any system of debentures issued on the authority of Estates Titles Commissioners, nor any system of having the value of debentures warranted by public officers.

36. The Ordnance survey is one of the most valuable acts of practical government that has ever been carried out in Ireland. The maps are in universal use in the management of estates, in the sale of land, and in the valuation of land for public and private purposes. The boundaries of the old divisions of the country, such as counties, baronies, parishes, and townlands are set out on the maps; the Poor Law unions and electoral divisions are aggregations of townlands, and can therefore be at once ascertained. In the southern counties the maps show the divisions of fields and tenements; and this system is being extended to the northern counties. These maps afford, therefore, the requisite materials to construct a public map as a basis of registration. Let the description of title as stated in the deeds of absolute title be compared with the tenements, and laid down on the map, and the map can ever after be made the basis of registration. The scale of the Ordnance survey is for the entire country six inches to the mile, and the separate maps of towns are on a scale of sixty inches to the mile. The country scale is large enough; but I have not had occasion to try the town scale sufficiently in practice to give an opinion as to it. I am not aware of the total cost of the Ordnance maps, nor of the period occupied in their preparation.

W. Neilson Hancock, LL.D.,
Examiner in Jurisprudence and Political Economy in the Queen's University in Ireland, and formerly Archbishop Whately's Professor of Political Economy in the University of Dublin.

Mr. H. Oldham.

Mr. Henry Oldham (Solicitor, Dublin).—*26th January* 1855.

1. Retrospective investigation is not necessary on each successive transfer, as a statement of title, once deduced and advised on, is handed down with the deeds and the searches made previously, and the subsequent deduction of title only is required on next transfer.

In Ireland almost every title begins, say 150 years ago, with Crown grant and patent, granted under the Acts of Settlement in the reigns of William III. and Anne, the country being then parcelled out anew, and but a few deeds or descents deduce the title to the present, save so far as complicated by settlements and trusts which a registry of title could hardly embrace. Title in Ireland is, consequently, cheaper than in England, and the existing registry, in case of loss of deeds, gives easy and clear evidence of ownership Titles are frequently deduced exclusively from the registry of deeds.

2. The disposal of land would be impeded by non-existence of a deed registry, but a title registry, classifying as in tables the several deeds, is impracticable.

3. It would soon become so involved and complicated that a register of title would be the greatest impediment. No public office could analyze and tabulate the mass of deeds yearly executed.

4. A statement of the past title is generally among the family deeds, and in leaseholds. the purchaser seldom goes behind the lease.

5. Eventually I do not think expense would be reduced.

6. An absurd question; the ratio depending on amount of purchase money. In large purchases the expense would not be more than a broker's commission on the transaction, and in practice large mortgages are frequently effected on a commission to cover all costs. Mr. Fitzgerald, the taxing officer of Incumbered Estates Court, can give more full and accurate information on this point than any one else. Title was fully investigated of every estate sold, and the costs are all lodged in his office. A few figures will give amount in a number of selected cases of sales of large amount and of small amount, as the costs of title are generally all together in the general bill of costs; the total cost of sale is no criterion, the greater portion being incidental to the rental and advertisements.

7. I think impracticable, especially on subdivision of parcels, or disputed successions.

10. Who is to decide on the present title?

11. Deeds may embrace several titles which should be parcelled out and allocated on record. If the several lands and parties be separately indexed, more cannot well be done.

12. If a register of title be adopted, such a course, though unjust, should be followed.

13. Utter ruin to parties beneficially entitled if such a system were adopted. Though trustees be honest, their representatives may not be so, with such a temptation held out to them.

14. Ditto.

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15. This would render the register as voluminous as deeds are now.

16. In my opinion they could not.

17. These equitable rights should bind a purchaser, and if a deed be registered he should have a copy to learn who are beneficially entitled.

25. They would be much more numerous if the trustees were actually owners, and purchasers from them not bound by trusts; witness defalcations by stockbrokers, &c. holding general powers of attorney.

26. Most objectionable.

27. The security would be nearly gone, and parties depending on them for maintenance in constant anxiety.

28. No map could be constantly varied to suit the changes in parcels and subdivisions. The Ordnance maps at present are in many cases useless, and do not show present boundaries, railways, suburbs, &c.

29. All this presumes that a plot of land or estate is like a parchment debenture or bond, which never varies, and can be traced and entered from hand to hand.

32. Commissions or authorities to confer indefeasible title should be exceptional, as otherwise great injustice may be done to third parties, and they should not have their rights dependent on accuracy of officers of a court which, if permanent, would induce carelessness in giving notices, &c. Even in Incumbered Estates Court very much depends on tne accuracy of and confidence placed in the statement of the solicitors practising, without good faith on whose part many rightful owners and tenants would be ousted.

34. The less tampering in these matters the better. The registry, however, should be made fuller by requiring consideration money and trusts to be shortly stated.

36. In many cases the Ordnance maps are already useless for practical purposes; witness the southern suburbs of Dublin, Kingstown, Rathmines, &c., where fields have been converted into terraces and streets.

HENRY OLDHAM, Solicitor,
42, Fleet Street, Dublin.

Mr. W. Brooke.

Mr. WILLIAM BROOKE (Master in Chancery, Ireland).—29th *January* 1855.

SIR, Taney Hill, Dundrum, 29th January 1855.

IN reply to your letter of the 8th instant, enclosing thirty-six questions, I regret that the time allowed for answering them is so short that I am wholly unable, especially at this busy period of the year, to bestow upon them so much thought and study as the great importance of the subject and the interest I feel in it demand. I am unwilling to offer to the Commissioners any hasty or ill-considered opinions, and it seems to be my best course to answer only those questions on which I have already formed a deliberate judgment. On this ground I have prepared the enclosed answers, which I beg leave now to transmit.

G. W. Sanders, Esq. I have, &c.
WILLIAM BROOKE, Master in Chancery.

1. 3. and 4. I consider the sale of land to be seriously and needlessly impeded by the present system, and that it would be much facilitated by a well-devised and well-managed plan of public registry of title. I have formed this opinion on all the grounds suggested in the fourth question; to which I would add, the speed and certainty of coming to a satisfactory conclusion of the negotiation. For I believe men are deterred from embarking in either sale or purchase of land by the dread of a tedious treaty, which may probably end in disappointment.

7. Only two forms of registry of title distinct from a registry of deeds occur to me. One would consist of abstracts of title; the other would in every case commence with the decision of a Court competent to declare the title, and to give a parliamentary security. And it should be provided that no subsequent dealing with the title should have any validity which did not appear on the same registry. The former plan would increase and perpetuate difficulties, by disclosing facts that had better remained unknown. The latter would, in my opinion, be a most valuable reform.

9. I would have every species of ownership put upon the register. If registration be an advantage, why should not all proprietors enjoy its benefits?

10. and 11. No inducement ought to be left to inquire into the period antecedent to the judgment of the Court that the title is clear. If, in the course of years, the title should again become complicated, recourse should be had again to the same judicial authority, and a new indefeasible commencement of title obtained. This ought to be made cheaper than the simplest title now is, with its voluminous abstract and deed of conveyance. During the period intervening between the successive decisions of the Court upon the title it would, of course, be necessary, upon every transfer, to deduce the title from the last decision, and during such period the public register would be simply a registry of assurances.

12. to 24. I am no advocate for the theory which seems to have suggested these questions, so far as I understand it. I am quite alive to the monetary and economical advantages likely to result if land could be successfully changed into an article of commerce, "as easily transferable as a bank note." But these advantages may be bought

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at too dear a rate; and I believe the subjects of this empire are not prepared for, and do not desire, the momentous political and social changes involved in the abolition of all entails and settlements of land. It would introduce a principle of disintegration which would rapidly cause ancient families to crumble down, and ancient estates to be transferred to new hands. At all events let a simple removal of abuses be first fairly tried. If it be wise to break the strength of our aristocracy, and to take away the element of stability from the ownership of land, let it be done openly.

If organic changes are to be introduced, let them stand on their own merits, and not be brought in silently as part of a merely reformatory measure. I allude in particular to Mr. Scully's Bill, in which there is so much that is excellent that I regret to see it framed so as to involve matters that seem to me full of danger.

17. to 24. I am hardly competent to speak as to the effect of the distringas here suggested, as I have never seen in detail the scheme of which it forms a part; but it occurs to me that the persons who most need protection, namely, married women, infants, and unborn children, are precisely those who cannot avail themselves of the benefit of a distringas.

25. This is the question on which I have had most opportunity of forming a just opinion, from the many cases of misdealing by trustees with stock and money which have come to my knowledge, both in my 29 years' practice at the bar and more than eight years' experience as a Master in Chancery. A great number of such cases have recently been forced before the Irish Masters in Chancery by the operation of the Incumbered Estates Court. Where funds have been provided by that Court for paying off charges on estates, which charges have been vested in trustees, it often becomes necessary to have new trustees appointed to fill the places of those who have died or refused to act. This obliges the tenant for life of the fund to proceed under the Trustee Act, 1850. In the majority of such cases which have come under my observation, trust funds have been misapplied, and those in remainder defrauded, at the instance and for the supposed benefit of the tenant for life. It seldom happens that trustees themselves derive any benefit from such misconduct. Their default is not fraud, but weakness and facility. The cases are so numerous, that I have no doubt that it would be a most valuable improvement to enact that all trust funds and estates, permanently settled for the use of persons under disability, should be conveyed to the Lord Chancellor as the universal trustee, and to allow no dealing with such funds save by application to him. The expense would be much more than compensated by the prevention of fraud and litigation, and the complete security which such an arrangement would afford.

26. and 27. Having regard to my answer to the 25th question, I think it dangerous to vest the registered ownership, both legal and equitable, in trustees. To do so is of course essential to the plan of making land as transferable as bank notes, but it would take away all security from settlements. Under such an arrangement, trustees of land would be, what trustees of money now are, protectors only where there is no danger, and, in most cases, traitors where there is. For when the tenant for life is conscientious, prudent, and rich, the trust is an office of no difficulty, and it is honourably fulfilled; but where the tenant for life is needy and unscrupulous, there are not many trustees firm enough to resist his importunities, and the few who hold out find their position so irksome as to be very willing to lend their aid to the substitution of a more pliant trustee by a Chancery order under the Act of 1850.

28. and 29. A public map connected with the registry would be of great value in ensuring accuracy, but I have formed no opinion as to details.

30. There ought to be judicial authority, but that ought to be the highest and the most respected,—that of the Court of Chancery.

I deprecate the mutiplication of tribunals, having each to frame and carry on a new system and a new course of practice. The experience of more than four years, during which I have been, under the Chancery Regulation Act of 1850, the judge of such a new tribunal, strongly impresses this upon my mind. The subject is too extensive for the time within which I am anxious to forward these answers; but I am persuaded that confusion, delay, and error in the proceedings are almost sure to abound in new jurisdictions, and that justice is never so well and so satisfactorily administered as in the ordinary tribunals, where the judges, advocates, and solicitors are all of the first class, and the procedure certain and known to the practitioners. No more honourable and useful occupation can be suggested for the most dignified Courts and for judicial talents of the highest order than the prevention of litigation. No more valuable boon can be given by the legislature to the owners of property than a simple, cheap, and speedy mode of determining what is their own, to deal with as they please. Let any lawyer call to mind the numerous class of cases of evil notoriety in which questions of legitimacy and pedigree have arisen. What ruinous expense they have involved! What cruel delays! What trials after trials, and appeals after appeals! What perjury and forgery! What falsification of registers and inscriptions! What miserable necessity of resorting for evidence to the idle, and often lying, family gossip of past generations! What indecency! What exposure of families! But it is obvious that the greater number of such cases would never have arisen, if every man, conscious that his title or that of his children was liable to a question, had possessed the means of referring it to a competent tribunal, and of obtaining a determination of all doubts by a just and irrevocable decision in the lifetime of the witnesses. This is only one of the many benefits which would flow from the adoption of the principle of Mr. Scully's Bill. I am glad to be able to speak with such sincere approbation of what I admire in his scheme, while I

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disapprove of those portions of it which would abolish settlements, and those which would erect a new tribunal unknown to our law.

31. Voluntary, by all means. A compulsory registration would be in some cases unjust; in all it would be odious. It would, moreover, crowd the tribunal immediately with business, thus producing great delay and discontent. Why should one who really wants the remedy, and perhaps wants it speedily, be kept back while the Court is deciding on the titles of a hundred who are dragged there against their will? Besides, a compulsory enactment is not at all wanted. If the hopes of the projectors (in which I fully share) are well founded, claimants for the obvious benefits of the measure will soon come in. All who are going to purchase land, and most of those who are about to make settlements of their estates, will avail themselves of the means so provided, for removing all doubt, and excluding all litigation. And every rational end seems answered if means are provided by which every purchaser for value may speedily and cheaply secure himself against the danger of a contested title.

32. The registration ought to confer a parliamentary title. The claimants and their rights could be ascertained and justly dealt with by a judicious improvement of the system now pursued in the Irish Court of Chancery, where such investigations are of constant occurrence, and where the object is so successfully achieved, that, though that Court is unable to confer a parliamentary title, I do not remember any instance of a purchaser under the Court being evicted.

33. The affirmative of this question would be in my opinion most unsatisfactory. Any measure of such a character would be a great disappointment to those who are expecting an improvement of which they can immediately avail themselves. The more so because the Irish Incumbered Estates Court has practically demonstrated the feasibility and immense advantage of conferring a clear and indefeasible title, shutting out every antecedent question.

34. It will be unfortunate for Ireland if her possession of the advantages here referred to should induce the legislature to extend yet further the great and growing evil of separate laws for the two countries; an evil greater, in my opinion, than any of those which have led to the present inquiry. I claim for Ireland the benefit of English laws and of English decisions. In all my experience I have found whatever in jurisprudence was peculiar to Ireland, to be a fruitful source of litigation, uncertainty, and discontent. Witness the innumerable cases upon our ejectment laws, our registry of deeds, and our Tenantry Act. In England doubtful questions are soon settled by an appeal to the highest tribunal; but the Irish suitor is often too poor to appeal, and it becomes the more important that his advisers should benefit by the light which English decisions afford.

35. I have often considered the Prussian plan of transferable land debentures, and always with an earnest wish for its adoption in these islands. I wish to see all mortgages, judgments, and equitable charges abolished, and land debentures, for sums of money not exceeding 100*l.* each, to the extent of one moiety of the estimated market value of the estate, to be the only permitted means of incumbering land.

It seems to me that such a system would greatly serve both the borrower and the lender. The former, by saving him from the present enormous delay and costs, and still more by encouraging and facilitating the gradual discharge of the loan by small sums at a time. The latter, by a securer title, by prompt payment of interest, by an easy and speedy remedy, and by great facility of transfer. All parties would be saved from litigation, and the public would gain a most valuable investment for small sums of money, constituting a sort of circulating medium of perfect security, bearing interest, and as easy of transfer as Bank of England paper. If such a system had been established, with or previous to the establishment of the Incumbered Estates Court, the same benefits might have been achieved with less of suffering and ruin, and some of the landed proprietors who have lost their all by its operations might have saved half their estates.

Sir M. Barrington, Bart.

Sir Matthew Barrington Bart. (Crown Solicitor for Munster.)—14*th February* 1855.

1. From my experience both as a public officer of 40 years standing and a solicitor of large practice, I am convinced that the sale and transfer of land is much impeded by the necessity of a retrospective investigation of the title. Purchasers usually require the investigation to commence with the original grant from the Crown, and as the expense is the same whether the sale be of one acre or of one thousand, consequently in the sale of a small portion of land the expense may exceed the purchase money, and is almost a prevention to the acquirement of small estates. I have always felt that the acquisition of small properties, free from rent and charges, tended materially to the peace of the country; and I was so convinced that the chief disturbances in Ireland for nearly a century were caused by the state of its landed property, that in the year 1844, I addressed a letter on the subject, to the late Sir Robert Peel (which was printed for private circulation in that year, and reprinted in 1852), and which he thought worthy of his consideration.

In that letter (a copy of which, with Sir Robert Peel's replies, I send herewith,) I showed from unquestionable authorities that the agrarian disturbances in Ireland, commencing in the year 1760, were entirely attributable to the possession of land; and, after referring to the state of landed property in other countries, I suggested the necessity of

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a simple mode of transfer of small properties in Ireland, and showed the great advantage to the peace and prosperity of the country in having some fee-simple proprietors of small portions of land in Ireland, as is the case in England and in other countries. With this view I was instrumental in the passing of the Farmers Estate (Ireland) Act, and to the production of evidence before the committee on that Bill.

2, 3. We have had a registry in Ireland for the last century. The want of it would have much impeded the sale and transfer of land. During the Rebellion of 1798 title deeds were lost or mislaid, and in many instances the title to an estate was made out altogether from the memorials of deeds recorded in the registry office.

4. There should be a starting point in the registry office before its benefits can be fully appreciated. Thus: power should be given to every owner to have his title investigated, and then to register a parliamentary title to his estates, as is now done in the Incumbered Estates Court in Ireland; and all future titles should be taken up from the registry of that deed, and no investigation of the antecedent title should be required.

5. If the registry is continued in its present form it will not much diminish the expense of investigating title; and any saving, whether to the buyer or seller, will depend on the conditions of sale.

6. The proportion which the expense of the investigating title bears to the purchase money depends on the amount of the latter. I before stated where it might exceed the purchase money.

7. I would register in the first instance the owner's title, after its investigation and approval by a competent tribunal, declaring that the owner or owners registering had a fee-simple or other title, as the case may be, in the lands, free from all incumbrances, or subject to certain incumbrances to be named in the memorial of registry; but I would not register the deeds under which the title was derived.

8. A registry of title would thus be made instrumental to the simplifying the title and form of conveyance, and would act as a substitute for the original deed, if lost.

9. A short memorial or abstract of the title should be deposited in the registry office, stating the estate of the person registering, of the next tenant for life, and of the tenant in tail, if living; if not, then a description of the expected tenant in tail, as the case may be; and a short summary of the incumbrances. The memorial of the deed may be very short, and in substance thus:—

A memorial of an instrument dated made between whereby the lands of described in the Ordnance map as were conveyed to to the use of A.B., his heirs and assigns for ever, free from all incumbrances, *or* to A. B. for life, remainder to C. D. for life, remainder to E. F. in tail male, *or*, remainder to the first or other sons, *or* daughters, of C. D., as the case may be, subject to a sum of £ for younger children, and to a sum of £ for amount of mortgage to &c., and that such title was approved by (*name of tribunal*).

10 to 12. I would not set forth any part of the old title on the registry; but all subsequent conveyances or incumbrances should be registered in like form.

13 to 16. I do not think it would be desirable to have any other equitable trusts registered; they should be left to the same guardianship of trustees as is now the case with trust money in the funds, which may be transferred by the trustees or persons in whose names they stand without any inquiry by the purchaser as to the trusts upon which they are held; and the purchaser should have only to look to the trusts and estates disclosed by the registry.

17 to 23. The form of registry which I suggest would, I think, effectually prevent the necessity of any distringas referred to in these queries, as no person would complete a purchase of land without seeing he had the proper parties to his conveyance, and would cause a careful selection of and keeping up the number of trustees, as is done in respect to money in the funds.

24. I think the best mode of protecting all interests is the form of registry suggested.

25. There are very few instances, to my knowledge, of misappropriation of stock or money to the injury of their cestuique trust.

26, 27. The form of registry suggested would give protection to all parties, and the security of settlements would be amply provided for.

28. The Ordnance maps of Ireland are so accurate that they give great facility to the making out title to small portions of land, and a reference to them would be necessary in future registry and purchases, first ascertaining that there was no dispute about boundary or bogs with any adjoining proprietor.

29, 30. I do not think the Chief Registrar should have judicial authority to decide on the title; he should merely see that the memorial was in all particulars a correct abstract of the deed to be registered; a superior tribunal should first investigate and decide absolutely upon the title.

31. The registry should be voluntary, except where the title was investigated by a competent tribunal, as the Court of Chancery or Incumbered Estates Court, and then the registry should be compulsory.

32, 33. The registry of a deed on a title approved by a competent tribunal should give a parliamentary title. The tribunal investigating the title should have notice given to all parties and claimants of such investigation, as in the Courts of Equity and Incumbered Estates Court.

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34, 36. Ireland possesses peculiar advantages for the introduction of a good system of simplifying title for the sale and transfer of land. It has the advantage of the whole country being admirably surveyed and mapped by the Government, and the Incumbered Estates Court has been of more service to the country than any other practical measure adopted therein for the last century. I regret much that it had not been introduced many years before. The facility which it gives to the acquirement of small estates in fee simple, free from incumbrances, and the removing of the incubus of debt off large properties, has given to the improvement of the country a stimulus which none but those who are in the habit of frequently travelling through it can imagine; besides, it has introduced into Ireland a body of wealthy proprietors from England and Scotland, who are constantly expending large sums in the improvement of their newly-acquired estates.

35. I think a system of land debentures, approved of by a competent tribunal, would be most beneficial to the landed property of Ireland, and tend much to its improvement. They should be tranferrable like Government debentures, and would be much sought after by shopkeepers, and persons having small sums to invest on safe security.

Of course the Commissioners are fully acquainted with the good effect of such debentures of the Prussian Land Credit Companies, and also that they have been issued to some extent by the Board of Public Works in Ireland, under their Land Improvement Acts.

MAT. BARRINGTON.

Dublin, 14th February 1855.

Sir R. Kane, M.D.

Sir ROBERT KANE, M.D. (President of the Queen's College, Cork, and Director of the Museum of Irish Industry).—17*th February* 1855.

1. FROM my experience I feel convinced that the sale and transfer of land are very much impeded, and rendered more expensive than ought to be, by the necessity for retrospective inquiries into title.

2, 3, & 4. I consider that the existence of a public registry of title, by removing the necessity referred to in No. 1., should materially facilitate the sale and transfer of landed property.

5. In such case the attendant benefits would naturally divide themselves between buyer and seller in the same proportion as the annoyances and expenses arising from the present system are now felt by each of those parties.

6 to 27. On these questions I do not feel competent to offer any useful opinions, the matters to which they refer being of a legal and technical nature.

28. It might not be absolutely necessary to accompany the registry with a public map; but it would be of great advantage that it should be so coupled; and I do not see any practical difficulty in connecting an accurate map with every dealing in land. Most properly prepared conveyances and leases of land are coupled with maps or terreplots, and the existence of the admirable maps of the Ordnance survey would render it peculiarly easy to carry out the general objects in Ireland.

29. Upon the Ordnance maps there would usually be no difficulty to ascertain the accuracy of the description and identity of the land, and these might easily be checked on the spot in any special cases by reference to some local officer, of whom there are enough available in every part of Ireland; the county surveyor, for instance.

30. It is rather for a lawyer to decide whether it would be necessary to invest the Chief Registrar with any and what extent of judicial authority in order to establish and maintain a proper registry of title.

31. I believe that, in order to induce a general acquiescence in a new system for the registration of title, it would be better to allow its adoption to be voluntary at first, and optional on the part of the ordinary public, but to oblige all sales under the Incumbered Estates and other Courts to be registered.

The advantage of the title to a property being thus simply *booked* would then make itself generally felt, and thus come into general use, without any serious opposition.

32, 33. I have some hesitation at expressing an opinion on these questions, which partake of a legal character; but I feel very strongly that, unless the registration shall give a clear position and unmistakeable parliamentary (state) title, it will but add one more maze to the labyrinth of costly complexities which have been found already so injurious to the value of landed property and to the interests of the public.

34. So far as I understand the position of landed property in England, it appears to me that the Irish arrangements are at present very far in advance towards the introduction of a permanent system to facilitate the sale and transfer of land, through the existence of a public registry of deeds, of the Ordnance survey, the uniform public valuation, and of the established machinery of the Incumbered Estates Court. A new plan for the registry of title, or any simplification of the laws regarding landed property, would probably meet with more ready acceptance, and have more immediate success here, than in England, more especially as, under the operation of the Incumbered Estates Court, a new class of proprietors is now arising in Ireland, who would grow up with the new arrangements, and whose ideas would be in harmony with its useful objects; which might perhaps not be so much the case in England.

35. I have often had occasion to direct my attention to the system of land banks and transferable debentures charged on land, especially as forming part of the system of

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landed property in Germany and Belgium, where such operations have been attended with much advantage to all classes of landed proprietors.

The plan, I believe, was first introduced by Frederick the Great of Prussia, at the end of the seven years' war (1763), for the purpose of reviving the agriculture of Silesia, and it has gradually extended itself over most parts of central and western Europe. The land debentures sell usually at a premium, from their rate of interest, valid security, and facility of transfer.

In regard to the introduction of a similar system into this country, I believe the mode suggested and explained by Mr. Scully, M.P., would be found very suitable; and that the tribunal he proposes to constitute should have a most useful influence in simplifying all dealings with land, and thereby improving its value as property, whilst also preserving its natural weight and position as a sound basis of social influence.

36. In regard to the value of the maps of the Ordnance survey of Ireland, I believe they are practically very perfect, as to boundaries and areas, and might, with very little trouble, be rendered critically accurate in any particular case. The construction of those maps is being rendered still more complete by the insertion of further details of field divisions, and by the contouring now in progress. The six-inch scale, upon which the townland maps are constructed, is quite large enough to show all essential details of boundaries in rural districts; and even enlargements from it to four or nine times the area will, so far as my experience extends, be found very little in error. I consider, however, that a check should be established by reference to the particular locality for identification; but the townland division is so universally employed in Ireland, and the names and boundaries of each townland are so fully recognized in its locality, that identification would be very seldom attended with any difficulty.

The scales, the expense, and other details as to the construction and use of the maps, will, I presume, be obtained by the Commissioners from the officers belonging to that branch of the public service. I only feel it necessary to refer to the use which I have made of the Ordnance maps in representing the distribution of values of land in Ireland, by mapping on the county index-maps the results of the official valuation now being carried on by Mr. Griffith. For this purpose the townland divisions have been inserted by hand on the county index maps, and each townland there coloured according to a scale representing its official financial value. The result has served in a very remarkable manner to exhibit at a glance, not only the actual values of each townland, but also to illustrate the circumstances which influence the distribution of values of land in the same or in different districts.

(Signed) ROBERT KANE.

G. W. Sanders, Esq.,
Secretary to the Registration of Title Commission,
32, Abingdon Street, London.

The Rt. Hon. T. B. C. Smith, M.R.

The Right Hon. T. B. CUSACK SMITH (Master of the Rolls, Ireland).—*6th March* 1855.

SIR, Merrion Square, Dublin, March 6, 1855.

I HAVE had the honour to receive the questions which you have transmitted to me by desire of the Commissioners for Inquiring into the Subject of Registration of Titles with reference to the sale and transfer of land.

Having considered that subject (amongst others) in a pamphlet published in 1852,* I beg to annex a copy of so much of the pamphlet as relates to the questions I have been requested to answer. I have added some observations which will explain the view I take of the subject of inquiry.

The feeling of the public on the subject of the impediments imposed by law, on the transfer and sale of land, has been well and forcibly described in an article† from which I have taken the following extract:—

'The system which has been suffered to grow up in this country is one which might 'have been devised expressly to render land as little an article of commerce, as little 'vendible and purchaseable as possible. If a man has a certain sum of money which 'he wishes to exchange for shares or stock in a public company, or the funds, the law 'points out an ostensible owner with whom he may deal; and though the stock or 'funds be affected *with any amount of trusts*, the writing of a few words settles 'the transaction. But if a man wishes to exchange his money against land, he is at 'once involved in a labyrinth of difficulty and expense. Voluminous abstracts, innu-'merable queries and objections, interminable conveyances, wearisome delays, and 'still more interminable attorneys' bills, beset his path, and, unless the purchase be 'very large, bear a formidable ratio to the outlay. Now that these things are not

* "Law Reform. Transfer of Land," by the Right Honourable * * * * * *. Saunders and Otley, Conduit Street. 1852.

† The *Times*, March 29, 1852.

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'absolutely necessary, is perfectly obvious, when we consider that stock in the funds, 'or shares in a railway company, are practically as permanent as the land itself, and that 'the only essential difference between them consists in the manner of describing them; 'the former* being designated by numbers, the latter by local descriptions; the one of 'which is as easily transferred by the simple registration of a name as the other. Only 'admit that every piece of land may have, as every pound of stock has, *some one to 'represent it for the purposes of alienation, and to act as a trustee for all those who may 'be beneficially interested in it,* and there is no reason why land should not be transferred 'with as much simplicity as stock.' . . . 'The only persons who would have any 'just cause to complain of such a change, would be those who have made it their business 'to acquire a knowledge of the complicated law which at present fetters the transfer of 'land.'

I shall endeavour to explain somewhat more fully than the limits of a leading article would permit, the difficulties which impede the transfer of land, and the remedies which should be applied to simplify the law on that subject.

The difficulties arise principally from the following causes:—

First—from the doctrine of trusts. Secondly—from there being no public office or department for the transfer of land. Thirdly—from there being no mode of setting up a real representative upon the death of the owner of land. Fourthly—from the circumstance that trustees in whom land is vested have not authority in general to act for and represent for all purposes the parties beneficially interested. Fifthly—from the doctrine of express and constructive notice. Sixthly—from the number of incumbrances and charges which frequently affect land.

First, with respect to the doctrine of trusts:—Where Government stock, railway stock and shares, or property of a similar class, is transferred upon trust, the trust does not in any manner attach on the property itself. The trustees are personally responsible for the due performance of the trust to the persons beneficially interested, but the stock, &c. is itself in no way affected by the trust. The stock, &c. being thus represented for the purposes of alienation by the party in whose name it stands, whether such person is absolutely entitled thereto, or is only a trustee for others, no difficulty whatever arises in making out title to the stock, and any person desirous to purchase or to sell stock, goes to a stockbroker, who for a trifling ad valorem charge, arranges the transfer by or to the person who employs him.

In the case where land is transferred upon trust, the rule is quite otherwise.

In 'Sanders on Uses and Trusts,'† it is thus laid down:—'Formerly we have seen that the intention of the parties has been frequently frustrated by the rigid adherence of the Court of Chancery to the technical scruples of the common law, for *uses* were considered as annexed to the estate of the feoffees in the land, *and not to the land itself.*' . . . But 'courts of equity in later times have said that *a trust* shall never fail on account of the disability or non-appointment of the trustee;‡ because they hold that *the trust,* if properly created, *will fasten upon and attach to the land* intended to be made subject to it.'

And again,§ 'Courts of equity now hold that *the trust attaches upon the land itself,* so as to convert all persons acquiring the legal interest (except a purchaser for valuable consideration without notice) *into trustees.*'

The proper remedy to be applied, to remove this impediment to the transfer of land, would be to enact, that no trust or charge created by any deed, will, conveyance, or other instrument—executed after the passing of the statute to amend the law—*should, attach upon or affect the land itself,* but should affect the trustees or real representatives and render them personally responsible in the same manner, and to the same extent, as trustees or personal representatives would be liable in respect of Government stock, or property of a similar class, vested in them upon trust, or as personal representatives. Trustees of land and real representatives would thus represent for all purposes those who had a beneficial interest in the land. This subject, however, will be more fully considered hereafter.

Secondly—The next impediment to the transfer and sale of land in England is, that there is no public office or department in which transfers of land are recorded.

Some persons have supposed that an Act for the registration of deeds would, of itself, remove the difficulties which prevent the free transfer of land. This is a mistake. If the doctrine of trusts, and the several other causes which impede the sale and conveyance of land, remain as at present, an Act for the registration of deeds will be of little avail. In connexion, however, with the assimilation of the law which relates to the transfer of land, to that which relates to the transfer of Government and railway stock, &c. it would be necessary that a public office and department should be established, in which *alone* any valid transfer of land could in future be made. Experience has shown that an Act for the registration of deeds will, of itself, afford no sufficient remedy for the

* That is, railway shares. Government and railway stock are not described by numbers, but the argument is equally applicable.

† Fifth edition, vol. i., pages 388, 389.

‡ The suggestions hereafter made would not interfere with this doctrine, as the Court of Chancery might have power in such cases to nominate and appoint trustees.

§ Ibid, page 280, note 6.

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existing defects in the law. In Middlesex, Yorkshire, and Kingston-upon-Hull, statutes are in force for the registration of deeds, but much complaint is made in those counties of the present state of the law; and an Act has been in force in Ireland for about a century and a half, under which conveyances are registered, (which statute has been amended from time to time,) but the registration of deeds and conveyances has had so little effect in simplifying the law, that it became necessary to pass an Act for the sale of encumbered estates in that country, under which statute the Commissioners have power to convey a Parliamentary title.* The public desire that they should be enabled, by law, to sell land as they can sell Government or railway stock, without the necessary intervention in every case of judges, commissioners, or lawyers, and without a heavy bill of costs accompanying each transaction.

A public office or department should accordingly be established, which might be called the LAND TRANSFER OFFICE,—and every future transfer of land, in order to be valid and effectual, should be made in such office. Books should be kept in the office, with a printed form of transfer on each page. The form of transfer should not be longer than the form of transfer of Government stock in the books kept at the Bank of England. No trust whatever should appear on such transfer. The transfer might, of course, be for a limited interest in the land; for example, for lives or years, but it should be an absolute transfer, without stating whether made upon trust or not. If the transfer was upon trust, the trust should be declared in a cotemporaneous deed or instrument, in the same manner as where Government stock is transferred upon trust; but such cotemporaneous deed or instrument should not be recorded in any manner in the Land Transfer Office.

A map should accompany every transfer, and such map, for the purpose of identification, should be signed and witnessed at the same time as the transfer, and the transfer should refer to such map. The map should be either annexed to the page opposite the transfer, or, if more convenient, all the maps might be bound up in a volume, to correspond by an outward number or letter with the volume in which the transfers were made. The trace of the land conveyed, should be made from a copy of the Ordnance survey map, in those counties in which the survey has been completed, and as the accuracy of these maps of the land transferred would be a matter of general importance, it would be proper that they should in all cases be traced or made by surveyors who should be officers of the Land Transfer Office, and who should be appointed for certain districts. All the maps should be on one scale.† The officers, surveyors, and clerks of the office should be paid out of a fund, to be created by an *ad valorem* stamp, to be impressed on each transfer and map. The amount of the stamp might either depend on the acreage transferred, or on the amount of the consideration paid for the transfer. The expense of the office could, I believe, be provided for by the imposition of a very inconsiderable stamp duty, unless the Chancellor of the Exchequer should think proper to impose a duty for the purpose of revenue.

Thirdly and fourthly—It would be necessary, as a part of the proposed plan, and to prevent the difficulty which would arise of obtaining a transfer, in the event of the death of the person or persons to whom land had been transferred, to adopt the suggestion of the Chancery Commissioners as to the appointment of a REAL REPRESENTATIVE to a deceased person.

It would be further necessary, that the trustees in all future conveyances of land should represent for all purposes, those who should have a beneficial interest in such land. This, indeed, would follow from the alteration in the law of trusts herein-before suggested.

The opinion of the Chancery Commissioners is not only important in relation to the recommendation, that a representative of the real estate of a deceased person should be provided, who should have the same power of representing and dealing with the real estate, as the executor or administrator has with respect to the personal estate, but is also important in relation to the question, whether trustees, in whom real estate is vested, should not, for all purposes, be considered as entitled to represent and act for those beneficially interested in the estate.

The Report of the Commissioners states that, 'Whenever any property, real or personal, is vested in trustees (other than personal estate vested in executors or administrators as such), the general rule of the court requires that all the *cestuique* trust should be parties to any suit relating to that property.'

And the Report then proceeds as follows :—'‡We think it most desirable that the principle of representation now applied to personal property, and, in the limited cases above mentioned, to real property, should be universally applied to all cases of real property, and to all cases of trust estate. Courts of equity, in their great anxiety to do com-

* It has been stated that the statutes for the Registration of Deeds, &c., in Ireland, have no worked well, in consequence of the alleged imperfection of the indexes kept in the office.—There is not the least colour of foundation for that statement.

† The Ordnance Survey Maps in Ireland have been executed with great accuracy, but are perhaps on too small a scale. Any portion of a map, however, can be obtained on a larger scale at Messrs. Hodges and Smith, Grafton Street, Dublin, where the Ordnance Survey Maps are sold.

‡ "Report of Chancery Commissioners," pages 15, 16.

§ The Commissioners had previously referred to the "Thirtieth General Order of the Court of Chancery," dated 26th August 1841.

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plete justice, and afford complete protection to the *cestuique* trust, have created embarrassments and difficulties for third persons who had claims to make, and rights to assert against the trust estate; *and have thereby, in many cases, materially prejudiced the interests which they have sought to take under their special protection.*

'The costs of the protection ultimately fall on the persons sought to be protected, and such costs, creating certain loss, fall upon all *cestuique* trusts of trust estates in Chancery, in order that some *cestuique* trust may escape the risk of possible loss from their interests being left to the protection of their trustee. The loss occasioned by costs seems not to have been adequately appreciated in the system adopted by courts of equity.'

The attention of the reader is requested to what follows:—'We think it most desirable that in cases of trust property, the trustee should, for all purposes in equity, represent it in the same manner, and to the same extent, as executors or administrators do the estates entrusted to them, and as assignees do the estates of bankrupts and insolvents.

'We also think that a representative of the real estate of a deceased person should be provided, who should have the same powers of representing and dealing with the real estate as the executor or administrator has with respect to the personal estate.'

Fifthly—The next impediment to the transfer of land is the doctrine in relation to express and constructive notice.

I have already observed that, 'courts of equity hold that the trust attaches upon the land itself, so as to convert all persons acquiring the legal interest (except purchasers for valuable consideration, *without notice*) into trustees.' *

Although it has been proposed that trusts should no longer attach *upon the land itself*, yet courts of equity would probably hold that a purchaser, with notice of a trust, would be bound by the trust, in the same manner as if it had attached upon the land.

The unprofessional reader should not be led to suppose, that his being a purchaser, *without notice*, in the popular and ordinary sense of the term, would enable him to hold the land, which he had *bona fide* purchased, and paid for, discharged from the trusts. The purchaser, for full and valuable consideration, although he had no *knowledge* whatever of the trust, may be affected by what a court of equity *considers to be notice*. Thus, 'notice to the purchaser's counsel, attorney, or agent, although himself the vendor or although he be concerned for both vendor and purchaser, *binds the latter*. So, notice to a solicitor in the country is notice to a purchaser, although he acts by a town agent; and notice to the town agent, of the purchaser's attorney in the country, would also be notice to the purchaser, and this prevails, although the purchase is made under the direction of a court of equity; and infants are equally bound with adults.' . . . . 'Although the counsel, attorney, or agent, be employed only in part, and not throughout the transaction, the purchaser is equally affected by the notice.' † . . 'What is sufficient to put a purchaser upon inquiry is good notice. That is, where a man has sufficient information to lead him to a fact, he shall be deemed cognizant of it. Therefore, if a man knows that the legal estate is in a third person at the time he purchases it, *he is bound to take notice what the trust is*. So, notice that the title deeds are in another man's possession, may be held to be notice of any equitable claim which he may have on the estate, and as a security for which he held the deeds. So, if a purchaser, with knowledge of the relation, bought from an agent, who bought from his principal, he may have to defend the purchase just as if he were himself the agent. A notice that part of the estate is in possession of a tenant is notice of a lease. And if the tenant has even changed his character by having agreed to purchase the estate, his possession amounts to notice of his equitable title as purchaser.' ‡ The unprofessional reader who wishes to understand the extent to which this rule of courts of equity has been carried, should read the several cases referred to by Lord St. Leonards in the work from which the above extracts have been taken, and amongst the rest, the case of Penny *v.* Watts, 1 Mac. and Gor. 150: the case of Whitbread *v.* Jordan, 1 Younge and Collier, 303; and the case of Kennedy *v.* Green, 3 Mylne and Keen, 399. The case of Jones *v.* Smith, 1 Hare, 56, is also an important case on the subject of notice. It has been held in cases arising under registry acts, that "apparent fraud, or *clear and undoubted notice*, would be a proper ground of relief; but suspicion of notice, though a strong suspicion, is not sufficient to justify the court in breaking in upon an Act of Parliament.' §

If the proposed plan of a Land Transfer Office was adopted, the doctrine of trusts altered, provision made for the appointment of real representatives, and if trustees of land had authority to act for and represent for all purposes, the parties beneficially interested, the whole of the doctrine of express and constructive notice, so far as it is thereby sought to convert purchasers for valuable consideration into trustees, should be put an end to. ‖

If any apprehension was felt on the ground that a surviving trustee or a surviving tenant in common might commit a fraud, and sell the estate and appropriate the proceeds,

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* See ante, page 449.

† "A Concise and Practical View of the Law of Vendors and Purchasers of Estates, by Sir Edward Sugden, 1851," page 602.

‡ Ibid., 606. § Ibid., 579.

‖ There might, of course, be such a case of express notice as would affect the purchaser with fraud. The jurisdiction of Courts of Equity to deal with the case of a fraudulent purchase should not be taken away.

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provision might be made that where land was vested in the name of two or more persons in the Land Transfer Office, the survivor should not be at liberty to convey without the real representative of the deceased joining in the transfer. The power of appointing new trustees under the Trustee Act, 1850, would prevent difficulty in the several cases provided for by that Act; and if the same care was taken in the selection of trustees of land as is taken in the selection of Trustees to whom Government stock is transferred, fraudulent transfers would be of very rare occurrence.

No doubt, there might be an occasional transfer of land, where it would be equitable, in the natural and not the artificial sense of the term, to convert the purchaser into a trustee; but it would be much better that an occasional breach of trust should be committed, than that the complicated system at present in operation, and the intolerable expense, delay, and injustice to which it constantly leads, should be continued.* If lawyers could be persuaded to think less of theory, and more of the practical results which follow from their theory, the public might have some chance of carrying out law reform.

The next impediment to the transfer of land is the number of incumbrances which sometimes affect the same. If a party from whom it should be sought to obtain a loan on mortgage, declined to make the advance, unless the lands proposed to be mortgaged should be transferred to him, they could be so transferred in the Land Transfer Office; but the transfer should appear in the books of the office to be an absolute transfer. It is every day practice to obtain an advance of money on a mortgage of Government stock, but the transfer in the books at the Bank of England is an absolute transfer. If the mortgagor was apprehensive that the lands might be sold by the mortgagee, and the surplus proceeds misapplied, it could, in all cases, be arranged that the transfer should be made to the mortgagee, and some other person who would be a trustee for the mortgagor. The transfer in the books of the office would be an absolute transfer, but the mortgagor and mortgagee would be both secure;—and it could be arranged that a sale should take place without the necessity of a foreclosure suit, if the amount was not paid off, within a limited time after a notice by the mortgagee requiring payment.

With respect to any subsequent mortgage, it should be ineffectual to create any charge on the lands. If the trustee, however, to whom the transfer was made conjointly with the first mortgagee, was a party to the subsequent mortgage, he would, of course, be a trustee for the subsequent mortgagee in respect of the surplus proceeds of a sale, after paying off the first mortgage; but such trust, on the principles herein-before stated, should in no way attach on the land. If the trustee was no party to the subsequent mortgage, the subsequent mortgagee might, perhaps, be at liberty to obtain a charging order, in the manner herein-after mentioned, as against the surplus proceeds, if, any, after paying off the first mortgage.

No judgment or other security entered into, acknowledged, or recovered after the passing of the proposed statute, should in any manner affect land unless a *charging order* should be obtained as herein-after mentioned. This provision should apply not only to charges and incumbrances by virtue of which a gross sum of money is to be paid, but to annual and periodical charges, such as jointures or annuities.

With respect to the mode in which a charging order is obtained as against Government stock, and shares in public companies, it is enacted by the 1 & 2 Vict., c. 110, s. 14, that if any person against whom any judgment shall have been entered upon in any of Her Majesty's superior Courts at Westminster, shall have any Government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name, in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior Courts, on the application of any judgment creditor, to order that such stock, &c., &c., shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon; and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to, if such charge had been made in his favour by the judgment debtor, provided that no proceedings should be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.

The 3 & 4 Vict., c. 82, s. 1, extended the former statute to funds standing in the name of the Accountant General of the Court of Chancery; and the 15th section of the 1 & 2 Vict., c, 110, authorizes the application for the charging order to be made *ex parte*, and without notice to the judgment debtor, and provides that it should be an order to show cause only; and such order operates as a distringas, and prevents the Bank of England or the public company from permitting a transfer to be made, until the order shall

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|| In order to guard against fraud, power might perhaps be given (as suggested in one of the questions), to lodge a distringas or caveat, and thus prevent a transfer until the distringas or caveat was set aside on motion in the Court of Chancery or some other Court. And if it was enacted that the person who lodged such distringas or entered such caveat, should be liable to the costs incurred in setting it aside, and to such sum by way of damages or penalty as the Court should think right, if it was lodged or entered without any just cause, the distringas or caveat would be rarely lodged or entered. An affidavit in a prescribed form should be made by the party lodging the distringas or entering the caveat in the Land Transfer Office; and such distringas or caveat should be void unless an affidavit of the service of a copy thereof on the party capable of making the transfer of the land, should be lodged in the Land Transfer Office within a limited time after the lodging of the distringas or entering the caveat.

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be discharged or made absolute. If the order is made absolute, it operates as a distringas, and prevents a transfer.

All persons claiming to be entitled to a charge or incumbrance created, or to a security acknowledged or recovered, after the passing of the proposed statute, should be bound, in case they sought to enforce the same against land, to obtain a charging order; and such charging order should be obtained by a course of procedure similar to that pointed out by the 1 & 2 Vict., c. 110, s. 14 and 15. The charging order, if obtained, should be lodged in the Land Transfer Office, and would operate as an injunction against the transfer of the land charged, without the knowledge or concurrence of the party who obtained such order.

Provision should be made, however, that a charging order, unless in case of jointures or annuities, should only remain in force for a limited period (say five years); but such order might be renewed. In case of jointures the order should be in force during the life of the jointress, and in case of annuities for the period for which they were created, but such periods should appear on the face of the charging order. A schedule should be annexed to every charging order, in a form to be stated in a schedule to the proposed Act,—which should provide for an accurate description of the lands. Charging orders should be bound up in volumes, and carefully indexed; and it should be the duty of the officer of the Land Transfer Office, immediately on such charging order being lodged, to enter a short reference to same at foot of any transfer appearing in the books of the office, of the land mentioned in the charging order. Separate indexes of land, and names of grantors, and of persons against whom charging orders were obtained should be kept, according to forms, which should be stated in the schedule to the proposed Act.

Another subject to be considered is whether leases should be recorded in the Land Transfer Office. It would, I think, be desirable that leases should be lodged, or an entry thereof made in such office. Some persons might consider it advisable that the lease itself should be lodged in the office. If it were so lodged it should be accompanied by a map prepared in the manner already stated; and provision should be made that a certified copy of the lease, and a trace of the map (if required), should be evidence of same. This would prevent the necessity of two parts of the lease being executed, and the leases, which should be bound up in volumes, would be free from the danger of loss.

If it were not thought desirable to lodge the lease itself, a very short form of demise could be made in books to be kept in the Land Transfer Office for that purpose, signed by the lessor and lessee, stating the date of the lease, the term, and the rent reserved, and referring to the lease, which should be endorsed by one of the officers in such Transfer Office.

The unprofessional reader will observe (if I have been so fortunate as to have made the proposed plan of reform intelligible), that the plan would only be *prospective*. There would be considerable difficulties attending the making it retrospective. If, however, when the Land Transfer Office was established, any satisfactory mode should be suggested of rendering the plan retrospective in its operation, the existence of the system as proposed, would obviously facilitate such further reform.

The plan could only be rendered retrospective by requiring a registry of the title to lands.

As to a very considerable portion of land in Ireland, there could be a registry of title without difficulty, by reason of the Parliamentary title acquired as to lands already sold under the Encumbered Estates Act, and also as to lands to be hereafter sold under that statute.

All those titles would be recorded without difficulty in the Land Transfer Office, and a registration of title would thus be effected in relation to all lands in Ireland already sold, or to be hereafter sold under the Encumbered Estates Act.

A limited period could be given to persons who have acquired rights since the sales already effected under that statute, to establish their claim before a tribunal to be authorized or established for that purpose; and a registry of title could thus be easily effected in Ireland as to all lands already sold or hereafter to be sold under that statute; and the adoption of the plan suggested in this pamphlet would prevent future difficulty and expense in making out title to such lands.

There would, however, be great difficulty in my opinion in rendering the measure retrospective in England, or as to lands in Ireland not sold or not to be hereafter sold under the Encumbered Estates Act.

To carry out such an object it would, I apprehend, be necessary to establish a Court of Claims.

If, however, even the prospective measure proposed in this pamphlet was carried out, the only difficulty, after the Act came into practical operation, would be, that the title of the vendor who made the first transfer in the books of the Land Transfer Office, should be investigated; but no further investigation of title would be necessary, as the future title from that of the first vendor would appear on the face of the books of the Land Transfer Office.

Many minute details for the carrying into effect the proposed plan could be stated; for example—it might be necessary to make an alteration in the law of dower, and in the act for the abolition of fines and recoveries; but it would render the subject complex to the unprofessional reader to enter into those details. If the principle of the plan proposed were admitted, I have no hesitation in stating, that a Bill could be prepared without much difficulty.

The Right Hon. T. B. C. Smith, M.R.

It will be kept in mind, that if the law which relates to the sale and transfer of land was rendered simple and inexpensive, considerable reform would be thereby indirectly effected in the proceedings of the Court of Chancery.

I am well aware of the opposition the proposal to reform the law will receive from those who have made it their business to acquire a knowledge of the complex system which at present fetters the transfer of land. The public, however, may rest assured that any plan which would uphold the present doctrine of trusts,—which would not provide for the appointment of real representatives,—which would not enable trustees in whom real estate is vested to act for and represent, for all purposes, the parties beneficially interested,—which would not free from liability and responsibility, as to the performance of any trust, all *bonâ fide* purchasers for valuable consideration, without regard to the existence of actual or constructive notice of the trust,—which would not prevent land from being subject to any incumbrance, except by some such course of procedure as has been suggested,—and which would not provide a public office for the transfer of land, would be ineffectual as a measure of reform.

The foregoing extract from the pamphlet to which I have referred, and for which pamphlet I am responsible, will, I believe, answer the greater number of the questions put to me.

With respect to the plan of land debentures, I do not approve of it.

I have, &c

G. W. Sanders, Esq., Secretary to the Registration of Title Commission.

T. B. Cusack Smith, Master of the Rolls in Ireland.

Mr. J. J. Murphy, Q.C.

Mr. J. J. Murphy, Q C., (Master in Chancery, Ireland).—2*d April* 1855.

1. I do not; having regard to the security of purchasers, to the existing law as to limitation against adverse rights, and to the power which the vendor possesses of stipulating for conditions of sale.

2 I entertain no doubt that it is, by reason of the want of a compulsory registration of all deeds, agreements, and contracts affecting land.

3. I do not think the establishment of such a register or record (which, in order to be of general advantage, should be universal and compulsory,) practicable; or if practicable, expedient.

4. Such a register, if introduced, would not, without an Act of Parliament declaring it to be conclusive and binding to the date of its being recorded, avoid the investigation of the past title. Without a legislative declaration to that extent, it would merely, *pro tanto*, diminish the expense of, by saving the necessity for, making out a new abstract. It could not render the buyer more secure; nor could it in any other way than by saving the expense of such new abstract, assist the sale or transfer.

There can be no doubt, that an Act of Parliament, giving legal and conclusive validity in all respects to the title, as registered and recorded, against the whole world, would necessarily assist the sale and transfer in both the ways, pointed out in this question, and would afford all the facilities, and security, incident to a full, unimpeachable, Parliamentary title.

5. The diminution of expense in the first case, suggested in my answer to the preceding quære, would merely operate as a saving to the seller; in the second case, it would be a saving to both seller and buyer.

6. I cannot undertake to answer this question, it not having been any part of my duty as Master to tax costs. This matter is peculiarly within the knowledge of the Taxing Masters and solicitors.

7. I think not.

8. I do not consider such a register practicable. A Parliamentary title conferred by such registration (but not otherwise) would simplify, by conclusively validating the title to the date of registry, but a further Act of Parliament or provision in the same Act, giving a short form of conveyance, founded on, and referring to such registry, would be requisite to simplify the conveyance. Without such a provision the old forms should, or at all events would, be adopted. With the aid of such a provision, the recital of the deeds deducing the title, as registered, might be dispensed with.

9. Every species of ownership should, in my judgment, be put upon the registry. In practice the greatest difficulties exist with respect to derivative or sub-interests, and any system not providing against these difficulties, must be defective and inefficient.

10. So far as I can understand the purposes in view, this would be essential, and such a system would be of little or, in fact, of no value, in my estimation, unless it precluded such a retrospective inquiry, and received a binding parliamentary sanction.

It is for these reasons, amongst others, that I regard such a registration as impracticable.

If it disclose the history and deduction of the title, it can be nothing but a registered abstract, and as such, in the absence of a preliminary judicial investigation, and of the result of such investigation being declared binding on all persons by Act of Parliament, I cannot see any public advantage to be derived from it, and the expense attendant on it, unless rendered compulsory, would be avoided.

Mr. J. J. Murphy, Q.C.

If such investigation take place, and its result be declared binding, it appears to me that it would be useless and unnecessarily burthensome to the parties to register the whole abstract. The abstract, as certified, should in this case remain in the office numbered and referred to in the registry. But the *record* itself should only state the result, viz., that such a person is seised in fee of the lands of A and B, as per certified and adjudged abstract, No.

The necessity for a previous judicial investigation of the title, before its result can be declared binding, is manifest. Without this I cannot see how a retrospective investigation of all dealings and transactions within the period of legal limitation (having regard to the circumstances of each particular title) can be avoided, and if not thereby avoided, what benefit can be conferred commensurate with the necessary trouble and expense, upon the party registering.

If such registry be merely *voluntary* and binding or conclusive upon no one (beyond the effect of the present Registry Acts), I doubt whether the trouble and expense will be incurred.

If it be *compulsory* it appears to me that it will be justly regarded as a great evil, not only by parties having estates, but also by the public who may be interested in them. The *former* would he bound unnecessarily to disclose a title which might perhaps be defective, but which otherwise might not be questioned, and which might be rendered valid by lapse of time; and the *latter* should be constantly on the watch to see that they were not registered out of their rights, or would be obliged to incur expense by seeing that their deeds, though already registered, were kept in their proper position upon the new abstract. I think such a system would have a strong tendency to disquiet titles and rights.

11. I can't see any difference.

12. It might be necessary, but in my judgment by no means desirable.

13. With regard to, or irrespective of such a system at all, I am of opinion that every trust, equitable or other, ought to appear on the registry.

14. I am quite of that opinion.

15. I think all such trusts should appear on the registry, and be thereby protected, as against any transfer, and that no transfer should be permitted otherwise than subject to such protected interest.

16. I am of opinion that it could not.

17. I do not; for the parties interested in these trusts mights be unborn children, infants, married women, lunatics, or parties out of the jurisdiction, or ignorant of the trusts created.

18. This depends on the nature, and extent of the trust. If the cestuique trust be entitled to the whole estate beneficially, it should prevent any transfer while uncancelled. In all cases the transfer should be subject to the protected trust.

19. The only distinction I can at present see, is that adverted to in the first part of my answer to the preceding question.

20. I can make no distinction between any classes of equitable interests. All appear to me to be equally entitled to protection.

21. It should define or describe the interest sought to be protected, and also the name and address of the cestuique trust.

22. By some simple and inexpensive form of registration.

23. The production or satisfactory evidence of the instrument conferring the right, and an affidavit.

24. The only, and as I consider the proper, mode is by the specific and compulsory registry of the deed or instrument, order or decree, creating or declaring the equitable interest, which would effectually prevent any purchaser from dealing with it; and purchasers should be compelled to search the registry.

25. Very frequent and very numerous, and I am sorry to say to an extent almost requiring, and certainly justifying *penal*, legislation.

26. I consider it wholly objectionable. I think the law referred to, as extended by late cases, has gone quite far enough.

27. Such is my very decided opinion. I am satisfied that the effect of such a change would be ruinous to the rights and interests of the classes of persons I have referred to in my answer to the 17th question, and who stand most in need of protection.

28. I think not. With the Ordnance survey and maps, the public are, in my opinion, sufficiently protected at present, and I consider that it would be unjust to impose on parties registering the expense of annexing maps.

29. According to my views, it would; and not only these, but also to investigate and determine the accuracy and legal effect of the title as stated.

30. It would; and I disapprove of any registration of *title*, so far as I understand what is intended by it, for this amongst other reasons.

31. The registration of all assurances, leases, contracts, and dealings with land, particularly equitable mortgages, should in my opinion be made compulsory, and such registration should be declared essential to their validity as binding, as in the late Act relating to judgments, 13 & 14 Vict. c. 29., and all questions and litigation regarding *notice* should be put an end to by imperative legislation to that effect.

I am likewise of opinion that all deeds, &c. now existing unregistered should also be

Mr. J. J. Murphy, Q.C.

required to be placed on the registry within a certain time, otherwise that they should cease to bind land; by means of some provisions analogous to those contained in what we call Moore's Act, relating to judgments. (9 Geo. 4. c. 35. sec. 3.)

With this view, I consider that the expenses of registration should be greatly diminished.

And also that the registration should be sufficient and bonâ fide, and that for this purpose the memorial should contain all the essential parts of each instrument—in fact, a brief summary of the material contents of each.

To effect this, I think that forms applicable to each general form of deed should be printed on parchment, with blanks to be filled up, containing convenient headings. It would be easy to prepare and furnish a skeleton of such plan, and I can do so if required.

A moderate scale of fees should be allowed to the solicitor for filling these, and the proper officer should see, and the solicitor should certify at the foot of the memorial, that they had been duly filled up according to the deed or instrument. The memorial should include grantors names, grantees bonâ fide or in trust, lands, estates, terms, trusts, and a summary of covenants, viz.:

1. Title.
2. Quiet enjoyment.
3. Against incumbrances (except if any).
4. Further assurances.

Powers.—A. B. to lease for twenty-one years to C.D., to charge with £ for children's portion, with jointure to extend to change trustees, &c., &c., &c.

An effectual and honest registration will be thus secured, all rights and trusts will be fully protected, without resorting to the process of distringas, and fair purchasers will know what they are dealing with. In addition every memorial will then afford full and clear secondary evidence of the contents of each instrument, which I look upon as a very important consideration. In my answer to question No. 10, I have already stated my views with regard to a compulsory or voluntary registration of *title*.

32. I do not think that any registration of title can or ought to confer at the outset a warranted parliamentary title. If it could or ought, particularly if it be compulsory, a new court of title, with authority and proceedings similar to those existing in the Incumbered Estates Court at present, should be instituted. This I consider wholly nexpedient, and I think it would be justly regarded as a great public grievance.

33. I cannot say that I understand this question sufficiently to be enabled to answer it. I do not sufficiently understand what is meant by the commencement of the title, as distinguished from the antecedent title.

34. All these, so far as they go, or have gone, must naturally assist such an object; but this question is so various in its suggestions, and would require so much investigation and consideration of details, results, and speculations, that I regret to say I am not in a condition to answer or even to consider it, consistently with my other engagements.

35. I have not directed my attention in any way to this matter, and I do not possess any information connected with the operation of land debentures in these countries or abroad.

36. I am unable to afford any information upon the particulars, with which this question is conversant.

(Signed) J. J. MURPHY,
Master in Chancery.

Appendix, Part F.

Extract from the Report of the Select Committee of the House of Commons on the Registration of Assurances, the Sale and Purchase of Lands, and the Transfer of Lands (Ireland) Bills.

(Ordered by the House of Commons to be printed, 5th August 1853.)

" Your Committee, appointed at an advanced period of the Session, and to whom were " referred three Bills, viz. :—

" 1. A Bill for the Registration of Assurances ;

" 2. A Bill to facilitate the Sale and Purchase of Land ;

" 3. A Bill to facilitate the Transfer of Land in Ireland ;

" proceeded, in the first instance, to consider the Bill for the Registration of Assurances. " They examined the petitions presented for and against the Bill, and heard evidence " upon it ; and they are of opinion that many of the serious objections urged in the " petitions against the registration of all assurances relating to landed property are well " founded, and have been substantiated.

" Your Committee find that the Bill contains within itself two distinct principles of " registration : one contemplating the registration of all assurances in any manner re- " lating to land and the legal or equitable estates and interests therein ; the other pro- " posing that the legal title alone shall be entered on the registry, and that there shall be " no necessity to register the instruments which declare or transmit the beneficial " interests or equitable ownership. The two other Bills which have been referred to " Your Committee proceed upon a principle similar to that contained in the first Bill, viz., " the principle of keeping the registered ownership wholly separate and apart from the " equitable right or title.

" Your Committee, pursuing this idea, and confining their attention to that principle, " have examined some witnesses of high professional reputation, and have brought under " their notice a scheme for the registration of 'Title,' or of 'Legal Ownership,' which, " if it can be fully developed and made capable of easy practical operation, would appear " to Your Committee to fulfil the most important conditions of registration, and to afford " the means of ensuring great facility for the transfer of land, combined with great " simplicity and security of title.

" It has not been possible for Your Committee, at so late a period of the Session, to " extend their inquiry into all the details of this scheme, so as to present it in an em- " bodied form, or to feel confident that they have ascertained all the difficulties which " may attend its practical operation. They consider it worthy of further and more careful " attention, and they are of opinion that registration will be practicable and useful if " effected upon this principle. Your Committee therefore recommend the House not to " proceed with the Bill for the Registration of Assurances ; but suggest the immediate " appointment of a Commission for the purpose of considering the subject of Registration " of Title, with reference to facilitating the sale and transfer of land, in order that a Bill " for effecting that object may be brought into Parliament at the commencement of the " next Session.

" The Bill 'to facilitate the Transfer of Land in Ireland' is adapted to Ireland only. " It bears evidence of great labour and care in its preparation, and is distinguished by " the clearness and simplicity of its enactments. This Bill, and also the Bill 'to facilitate " the Sale and Purchase of Land,' will furnish important suggestions for the consideration " of the Commissioners."

" 3 August 1853."

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